

therefore, that the section be maintained with the omission of the proviso. The draft proposes to insert "materially" before "diminished", to indicate to the Courts that remission is not to be given for any but considerable loss.

14. Sections 35 and 36 of the present Act will be entirely superseded, and the reference to them in section 20 may be excised.

15. In section 21 (relinquishment of the holding) the last clause of the first sentence may be omitted. The Lieutenant-Governor wishes to make a distinction between relinquishment and abandonment. If tenants are to have considerable fixity of tenure, it is right that the landlord should have fair notice of relinquishment of holding, that he may make suitable arrangements for a new tenant. The date for notice of relinquishment has accordingly been antedated to the 15th of March, and at this time lease to another tenant can hardly have been given. It has been prescribed that the notice shall be in writing.

16. A section has been drafted in regard to abandonment [21 (D)], adopted from section 87 of the Bengal Tenancy Act.

17. In the sections on compensation for tenants' improvements considerable changes have been made. Section 22 of the present Act directs that the tenant shall be entitled to compensation for improvements whenever his rent is enhanced. This provision has, so far as the Lieutenant-Governor can ascertain, remained a dead letter. Under a system by which the adjustment of rent between landlord and tenant was left entirely to private contract, any enhancement of rent, so long as the tenant chose to stay, probably took into consideration the tenant's expenditure on the improvement of his holding. For the future at least no such provision is needed. The enhancement at the close of a statutory period of tenancy is a statutory enhancement, and will have effect whether or not the tenant has in the course of his expiring period of tenancy effected an improvement which has added to its value. The clauses in section 22, providing for compensation on enhancement, may therefore be left out.

18. The principle on which compensation is calculated under the present Act is solely that of the outlay of the tenant. The last sentences of the section bars right to compensation for improvements which were made more than thirty years before the date of claim, and in practice the procedure of the Courts is to make an estimate of the probable outlay, assume that the improvement will last for thirty years, and award to the tenant the sum which in that proportion represents its unexpired value. Thus, if a well is believed to have cost Rs. 300 ten years ago, the Court will award to the tenant Rs. 200. The principle is by no means a just one, for the landlord is exposed to great exaggerations by the tenant of his original outlay, and where the improvements are of old standing these statements are difficult to check. The Lieutenant-Governor considers that the principles laid down in section 83 of the Bengal Tenancy Act are not only in themselves more fair, but more simply and readily applied by the Courts, for it is seldom difficult in any village to ascertain the difference in letting value due to irrigation, and a well is the most common of all improvements in Oudh. A section has been accordingly introduced from the Bengal Act, section 25(A), and the references to outlay and the period of construction omitted from section 22.

19. It is the recognised custom of the province that a tenant cannot make an improvement of a permanent character without the consent of the landlord. So long as the tenant held on a yearly tenancy at the will of the landlord, this consent was obtained on terms which were sometimes very harsh. I am to refer, for example, to paragraph 127 of Colonel Erskine's report of the 1st June, 1883 (page 277 of the second volume of papers on the condition of the Tenantry in Oudh). Now that the ordinary tenancy is for seven years, it is necessary for the agricultural progress of the country that the landlord's consent to improvements shall not be unreasonably withheld. It has accordingly been proposed in the Bill that the tenant shall have the right of applying to the Deputy Commissioner should the landlord refuse his consent, and that the Deputy Commissioner, after hearing the landlord's objections, shall pass such orders as may be fair and equitable.

20. On the other hand, it is right, when enhancement is otherwise carefully restricted, that arrangement should be made for the assessment of a fair enhancement on holdings the produce of which has been increased by a landlord's improvement, and sections 26 and 36 (K) of the Bill have been drafted for the assistance of landlords in this matter.

21. Section 25 of the present Act is believed to have been of very little, if any, value. It has, however, been retained in section 25 (A) of the Bill in a shorter form, taken from the second clause of section 83 of the Bengal Tenancy Act.

22. Chapter III of the Oudh Act refers to commutation and payment of rents in kind. The Lieutenant-Governor proposes to omit the last two clauses of section 28 and the whole of section 29. The commutation of grain-rents is an exceedingly delicate and difficult business, while the prevailing opinion as to the advantages and disadvantages of commutation is apt to vary greatly, the authorities leaning sometimes on one side, sometimes on the other. It can hardly ever be expedient that the Government shall interpose, during the currency of a settlement, to determine officially a question of this nature, which is essentially connected with local circumstances and conditions of agriculture that are best adjusted by mutual consent; and, since, in fact, the authoritative commutation of rents

is hardly known in Oudh, the Lieutenant-Governor would prefer to leave it, by law, to private arrangement between landlord and tenant, except when a settlement of revenue is in progress. The transition from rents in kind to cash-rents is gradually spreading with the improvement of agriculture, and the process should be left to its natural and spontaneous course.

23. Chapter IV of the Act deals with the enhancement and settlement of rent. So far as it concerns the rent of tenants with a right of occupancy, they are left untouched. In the two sections, 35 and 36, of the Act are contained the whole of the provisions of the present law in regard to the rent of other tenants. To introduce the scheme sketched in paragraph 69 of my letter of 21st December, 1883, the sections numbered 35 to 36 (K) have been substituted for them in the Bill. They give every tenant a statutory right to occupy his holding for seven years, with a new period beginning from every change in rent or area by the landlord, and at the end of every period of tenancy they give him the preferential claim to continue in his holding at a rent that cannot be more than  $6\frac{1}{4}$  per cent. in excess of the previous rent, or, if he be ejected, to be paid compensation for disturbance. In short, the landlord cannot disturb the tenant for seven years, and if after that period he desires to eject he must pay compensation. In no case can enhancement of rent, whether upon the sitting tenant or his successor, exceed  $6\frac{1}{4}$  per cent. of the old rent; but if the sitting tenant will not agree to an enhancement thus limited he must quit without compensation. The new sections also provide that enhancement shall be by notice; they prescribe a procedure for contesting the notice; and detail the liabilities of the tenant, when he retains or vacates the holding, with or without objection to the notice (clauses 1, 2, and 4, paragraph 69, above quoted). The rights of a tenant are, however, to be personal, and provision has been made in sections 36 (L) and 36 (M) that the heir of a tenant who dies shall retain the holding only till the expiry of the statutory term current at the time of his death; and, subject to any claim by the heir to compensation for improvements, the landlord is left free to let the holding to any person at any rent which may be arranged (clause 6, paragraph 69). The new tenant under section 35 (A) then acquires statutory rights similar to those enjoyed by his predecessor.

24. In section 36 (J) power has been taken by the Local Government to vary the limit of enhancement at stated intervals (clause 3, paragraph 69).

25. In Chapter V of the Act are the provisions for ejectment and the determination of tenancies. In this there has again been much addition and, for the sake of clearness, some re-arrangement of the sections.

26. Section 37 of the Bill reproduces section 41 of the Act unchanged, and states that a tenant with a right of occupancy, and in certain other cases, may be evicted only by a decree for ejectment. Among these tenants is included, by the present Act, a tenant under a special agreement. A tenant evicted by decree is not entitled to the compensation for disturbance given to the statutory tenant of the Bill. The Lieutenant-Governor is of opinion that the section should continue to cover the case of a tenant under special agreement.

27. Section 38 of the Bill is with some alteration section 42 of the Act. It covers the case of all other tenants, and permits their eviction either by a decree for ejectment under section 43 (A) of the Bill, or by an application where decreed arrears of rent remain unpaid, or by the notice of ejectment prescribed by the present Act. The application for ejectment for arrears has been taken from section 35 of the North-Western Provinces Rent Act (XII of 1881), and is a simpler procedure, which the improved position of the tenant justifies, than the application in execution of decree allowed by the present Act.

28. If the landlord proceeds by notice he is required by section 38 (A) of the Bill to deposit the compensation for disturbance, which was part of the scheme of the letter of December, 1883 (paragraph 69, clause 4).

29. In section 39 of the Bill (43 of the Act), which describes the details to be given in the notice, the only important change is that the time of service is put much earlier in the year (15th of November, instead of 15th April). Tenancies will now be of seven years' duration, and it is very desirable that notice should be given in sufficient time to admit of all claims on the ground of improvement or other objections being fully sifted and decided before the expiry of the year.

30. Section 40 of the Bill (section 37 of the Act) then details the grounds on which the notice of ejectment may be contested. To the grounds given in the Act have to be added those which the new provisions in the Bill require. The notice may have been issued before the seven years of the statutory tenancy have expired, or the compensation for disturbance may have been deposited only in part or not at all. In sections 40 (A) and 40 (B) of the Bill the tenant is required, if he has any claim to compensation for improvements, to give a specific statement of his claim, and the Court is to determine it before it allows eviction. From the ambiguous language of the Act there have been contradictory rulings in the Rent Courts of Oudh as to the liability of the tenant to eviction before receipt of compensation due to him for improvements. It was clearly the intention of section 22 that he should be compensated before he was removed, and this is definitely expressed in the Bill.

31. Sections 41 and 42 of the Bill represent sections 44 and 45 of the Act with such alterations as the provisions of the preceding sections or experience in the working of the

present Act require. In section 42 of the Bill a clause has been inserted, which was much wanted, enabling the Court to give assistance to the landlord, when needed, to evict a tenant who has contested a notice unsuccessfully. These sections contain the only provisions by which a landlord can remove a tenant of bad character, and no tenant is so likely to resist any action by the landlord himself. If assistance may be properly asked when the tenant has not contested the notice at all, it is more needed when the notice has been contested without valid ground of objection. The section in its present form follows the provision of section 40 of the North-Western Provinces Rent Act.

32. Section 43 of the Bill has been taken, as already explained, from the Rent Act of the North-Western Provinces.

33. Section 43(A) is the provision which the Lieutenant-Governor would substitute for section 11 of the Act, in regard to the terms on which a tenancy may be determined by a decree for ejectment. Section 11 bases it on a failure to perform or observe any of the stipulations of the lease or patta; but the patta of a statutory tenant will not contain any special stipulations, and when such a tenant defaults in his rent the landlord's process will be under section 43 of the Bill.

Even a statutory tenant, however, should be liable to ejectment if he uses his holding in a manner which renders it unfit for the purposes of his tenancy, and provision to that effect, taken from section 44 of the Bengal Tenancy Act, has been introduced in section 43(A) of the Bill. Moreover, many statutory tenants will hold on grain-rents; and as the amount of the landlord's receipts depends on the area the tenant cultivates, the landlord should be ensured against serious damage by the tenant's deliberate neglect to cultivate. In paragraph 77 of my letter of December, 1883, it was recommended that local custom should be left to decide what extent of failure in cultivation should be followed by forfeiture of the holding. This is the object of the second clause in section 43(A) of the Bill.

Tenants, however, "having a right of occupancy, or holding under an unexpired lease, or special agreement or decree of Court," are protected by section 41 of the Act (37 of the Bill) from eviction, except in execution of a decree for ejectment. The section specifies that a decree for ejectment against a tenant with a right of occupancy shall not be made unless at the date of the decree a decree against him for an arrear of rent has remained for fifteen days unsatisfied; but no definite explanation is given of the conditions under which ejectment may be made of the other classes of tenants specified in the section whether for failure in stipulations in the unexpired lease or special agreement, cessation of the effect of the decree of Court, or other ground for eviction. The Lieutenant-Governor presumes that it has been hitherto left to be decided under the general law whether the grounds for eviction in any such case are or are not sufficient, and that it is unnecessary to give any precise specification. This is, however, a matter on which the Legislative Department will advise.

34. In sections 44 and 45 of the Bill, corresponding to sections 38 and 39 of the Act, the period of the year it stated at which ejectment may take place. A sub-lessor is subjected to a special penalty in section 34(A) of the Bill, and there seems no reason for excepting him from the general rule that ejectment shall take place at the close of the agricultural year. As a statutory tenant he could only then be ejected, and for the same reason the last clause of section 38 of the Act should be omitted.

35. In section 39 of the Act the word *thikadār* has been substituted for sub-lessor.

36. Section 40 of the Act has been practically absorbed in section 43 of the Bill.

37. To this chapter of the Act two sections have been added in regard to *sir*-lands. The Lieutenant-Governor accepts the opinion that in the home-farms of the landlords no statutory rights should be recognised in the tenants who may from time to time be admitted to cultivate in them. The principle is recognised in the Tenancy Acts of the North-Western Provinces and Bengal. Whenever, however, statutory rights are recognised outside the private lands of the zamindār, it becomes necessary to define what these private lands are. Hitherto there has been in Oudh no special reason for entering as *sir* in the rent-rolls land which is not *sir*; for the change of law now proposed, which is to restrict the arbitrary powers of landlords over all holdings that are outside *sir*, has not been anticipated, and the revision of assessment is still sufficiently distant to make it more convenient for the collection of rent that land let to tenants shall be so recorded. From all that has been reported the village rent-rolls are in this respect, as indeed in most others, very fairly correct; and the Lieutenant-Governor is disposed, therefore, to make a less exacting definition of *sir* than that in force in the North-Western Provinces. The definition of *sir* which is given in section 46 (A) of the Bill is for these reasons less stringent in several particulars than that which is laid down in section 3 of the North-Western Provinces Rent Act. It has been proposed on some authority to adjust this definition on the principle of allowing land to fall into *sir* and again to fall back into ordinary tenancy land by fixing certain periods after which continuous cultivation by the landlord or by a tenant should determine the character of the cultivating occupancy. The rule of the North-Western Provinces is to fix a long period of continuous cultivation by the landlord, and then to make the lands so cultivated a permanent addition to his original *sir*, whether he continues to cultivate or lets to a tenant. The Bengal Act prevents any accession to the present *sir* unless it is recognised by village custom.



The Lieutenant-Governor would have been glad, nevertheless, to admit a proposal which is quite in keeping with the fluctuations of all agricultural enterprise, and the developments and depressions which circumstances frequently induce in agricultural families. No adjustment, however, has been discovered to regulate the recognition of lands as *sir* and their restoration to the normal conditions of tenancy which the landlord will not be able so to manipulate as to exclude from the statutory provisions an area of cultivated land considerably larger than that which he for the time being occupies. For the purposes of the landlord's cultivation, moreover, there is no restriction on its development. When a tenant's holding falls in by his death, it is open to the landlord to occupy it himself instead of letting it to another tenant. Whether, therefore, it is called *sir* or not, will merely operate in determining whether the landlord can subsequently let it without initiating the usual statutory privileges in his tenant. After mature consideration the Lieutenant-Governor is of opinion that *sir* to the extent of all present requirements is provided by the definition as it stands in the Bill, that this may, as in the North-Western Provinces and Bengal, be permanently excluded from the operation of the sections which regulate the ordinary holdings of tenants, but that for the future no provision should be made by the law to enable a landlord, by private cultivation for any definite period, to remove permanently any lands from the general operation of those sections.

38. The section 40 (B) of the Bill has been added to meet the case of lessees and mortgagees who during their management have brought lands under their personal cultivation. These are lands which, on the expiry of the lease or redemption of the mortgage, are paying no rent; and unless some express provision is made, the lessee or mortgagee would apparently have not only the statutory rights of a tenant, but be entitled to sit rent-free.

39. In Chapter VI (Distress for Arrears of Rent) the Lieutenant-Governor proposes no change.

40. In Chapter VII (Jurisdiction of the Courts) the change are few.

41. In the preamble of section 83 a small change has been made in the terms of section 93 of the North-Western Provinces Rent Act, excluding definitely the jurisdiction of all Courts other than Courts of Revenue in the classes of cases specified.

In clause 3 it seems unnecessary to limit a suit for enhancement to the case of an occupancy-tenant. A lessee in whose lands there may be large alluvion may be liable to a suit for enhancement.

The last part of clause 4 is unnecessary for reasons stated in an earlier part of this letter.

In clause 9 an addition is necessary from the terms of section 26 of the Bill.

In clause 10 an addition is required by section 21 (A) of the Bill.

42. In section 91 an addition is proposed authorising the Local Government to invest any officer of the grade of a Deputy Collector with the powers of a Deputy Commissioner to hear applications by a tenant under section 24 to make improvements, or of a landlord under section 43 to eject a tenant for arrears of rent.

43. Section 102 of the Act gives summary powers to Deputy Collectors to restore possession which has been illegally disturbed. From orders under this section there is no appeal. Against this section there has been much complaint, and now that the position of the tenant will be comparatively secure it is preferable that the restoration should be by ordinary suit, subject to the usual appeal. For this section of the Act has been substituted a provision enabling the landlord to recover a fair rent for land which has been occupied without his permission. The absence of any such provision has been for many years a frequent cause of notice of ejectment. The only course open to the landlord hitherto, when a tenant has added surreptitiously to his holding, has been to eject him, or to attack him by the cumbrous process of a suit in the Civil Court for damages. If the land happened to be unlet in the previous year, the provisions of sections 35 and 36 of the Act prevent the landlord from recovering any rent in the Rent Court.

44. Section 112 of the Act requires that in all suits under the Act the summons to the defendant shall be for the final disposal of the suit. The suit is in many cases intricate, and will hereafter involve and concern tenancies of a longer and more valuable character. It is proposed to limit this provision to specified classes of suits.

45. Section 116 of the Act is no longer consistent with the general provisions of the Bill, and should be omitted.

46. Section 125 of the Act provides that sale of an under-proprietary tenure shall not be made if satisfaction of the decree can be made by management of the tenure under sections 243 and 244 of the Civil Procedure Code of 1859 (or the corresponding sections of the Code of 1882). Management of under-proprietary tenures by the Deputy Commissioner has for some time, however, been recognized as practically impossible. They are generally small; as they come under the Deputy Commissioner's charge, they are usually scattered; and official management can be neither efficient nor economical. If the under-proprietor can give the Deputy Commissioner any anticipation that a private adjustment of

the judgment-debt can be effected by mortgage or otherwise, time can always be given under section 305 of the Code of 1882, and the Lieutenant-Governor's opinion on the whole is that all of the section, except the first sentence, may be without disadvantage omitted.

47. In a concluding chapter (X) of the Bill are entered four new sections.

48. Section 129 reserves to the Local Government authority under the sanction of the Governor General in Council to appoint an officer for the revision of rents in an estate in which from grave mismanagement the condition of the tenantry has been materially deteriorated or the area of the cultivation diminished. This formed the seventh clause of the scheme in paragraph 69 of the letter of 21st December, 1883, and the reasons for the provision have been there sufficiently explained.

49. Under the present registration law all pattas for seven years, for however small a sum, must be registered. The inconvenience of an enforced registration throughout the country would be very serious; and as the pattas of all tenants will be checked by the supervisor-kanungos, registration seems to be unnecessary. The object of registration is practically effected by his verification, and personation will be difficult when the verification is made in the course of his village rounds. It is proposed, therefore, in section 130, to exempt pattas for the statutory period of seven years from the Registration Act.

50. In section 131 reference is made to a schedule, in which will be entered certain tracts which the Lieutenant-Governor proposes to exclude from the general rule of a statutory right to a seven years' holding. It has been explained in paragraph 78 of the letter of December, 1883, that in part of the northern and submontane districts the rent customs are exceptional, the area in cultivation varies with the season, and the rent is separately settled at each harvest. With these circumstances the general proposals of the Bill will not fit in; but in these tracts the population is sparse, and the tenants can command their own terms. A detail of the areas to be scheduled will be forwarded subsequently.

51. In the last section (132) of the Bill power is taken to the Local Government to make any rules necessary under the Act and consistent with it. The terms of the section have been taken from the last clause of section 211 of the North-Western Provinces Rent Act.

S. HARVEY JAMES,

*Offy. Secretary to the Government of India.*

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 9th June, 1886, and was referred to a Select Committee:—

## NO. 8 OF 1886.

*A Bill to alter the constitution of the body corporate known as the Trustees of the Indian Museum, and to confer certain additional powers on that body.*

WHEREAS it is expedient to alter the constitution of the body corporate known as the Trustees of the Indian Museum, and to amend the law relating to the powers of the said Trustees; It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Museum Act, 1886; and

(2) It shall come into force at once.

2. Sections 3, 4 and 5 of the Indian Museum Act, 1876, are repealed.

3. For those sections the following shall be substituted, namely:—

## “Incorporation of the Trustees.

Constitution and incorporation of the Trustees of the Indian Museum.

“3. The Trustees of the said Indian Museum shall be—

- (a) the person for the time being holding the office of Accountant General of Bengal;
- (b) five other persons to be appointed by the Governor General in Council;
- (c) five other persons to be appointed by the Lieutenant-Governor of Bengal;
- (d) five other persons to be appointed by the Council of the Asiatic Society of Bengal; and
- (e) five other persons to be appointed by the Trustees;

and the said Trustees shall be a body corporate, by the name of the Trustees of the Indian Museum, and shall have perpetual succession and a common seal.

“4. All the powers of the said body corporate may be exercised so long and so often as there are nine members thereof.

“5. If a trustee appointed under section 3 dies, or is absent from India for more than twelve consecutive months, or desires to be discharged, or refuses or becomes incapable to act,

or becomes Accountant General of Bengal, then the authority which appointed the trustee may appoint a new trustee in his place.”

4. (1) For the purposes of the Indian Museum Act, 1876, as amended by XXII of 1876, this Act—

- (a) the persons nominated by the Governor General in Council under the Indian Museum Act, 1876, and now holding office as Trustees, shall be deemed to be persons appointed by the Governor General in Council under section 3 of that Act as amended by this Act;
- (b) the President of the Asiatic Society of Bengal, and the other members of the Council of that Society nominated by that Council under the Indian Museum Act, 1876, and now holding office as Trustees, shall be deemed to be persons appointed by the Council of the Asiatic Society of Bengal under the said section; and
- (c) the persons elected and appointed by the Trustees under the said Act, and now holding office as Trustees, shall be deemed to have been appointed by the Trustees under the said section.

(2) The Secretary to the Government of India and the Superintendent of the Geological Survey of India shall cease to be *ex officio* members of the said body corporate.

Power to Trustees to keep collections not belonging to them.

5. Notwithstanding anything in the Indian Museum Act, 1876,—

XXII of 1876.

- (a) the Trustees of the Indian Museum, if they think fit, may, with the previous sanction of the Governor General in Council, and subject in each case to such conditions as he may approve and to such rules as he may from time to time prescribe, assume the custody and administration of collections which are not the property of the Trustees for the purposes of their trusts in that Act mentioned, and keep and preserve the collections either in the Indian Museum or elsewhere; and
- (b) in the event of the trust constituted by that Act being determined, collections of which the Trustees have assumed the custody and administration under the foregoing part of this section shall not, by reason of their then being in the Indian Museum, become the property of the Government of India.

And whereas it is provided in the Indian Museum Act, 1876, that the Trustees of the Indian Museum shall have the exclusive possession, occupation and control, for the purposes of their trusts in that

Act mentioned, of the whole of the building called the Indian Museum, except certain portions thereof set apart for other purposes; and whereas the Trustees are by virtue of that provision in possession of the property described in the schedule to this Act; It is hereby enacted as follows:—

6. The Trustees may, with the previous sanction of the Governor General in Council, and subject to such conditions as he may approve, deliver possession of that property to such person as the Lieutenant-Governor of Bengal may appoint in that behalf.

#### THE SCHEDULE.

Land bounded on the north by a straight line drawn between the east and the west boundaries parallel to the main south wall of the Museum at a distance of twenty-five feet from the said wall, on the west and south-west by the Chowringhee Road and the walls of the premises known as No. 29 Chowringhee Road, on the south by Kyd Street, and on the east by the walls of the premises known as No. 15 Kyd Street and No. 4 Chowringhee Lane, measuring in all four acres, three roods and sixteen perches, together with all buildings, roads and tanks existing or erected thereon, and all easements appertaining thereto.

#### STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to give effect to an arrangement, made with the approval of the Government of India, whereby—

- (a) the Bengal Government is to be represented among the Trustees of the Indian Museum;
- (b) the Bengal Government is to entrust the Trustees with the custody and administration of the economic, ethnological, Indian Art-ware and Fine Art collections belonging to that Government; and
- (c) the Trustees, in consideration of the provision by the Bengal Government of additional accommodation required by them, are to surrender certain land adjacent to the Museum on which that Government may build a School of Art and Art Gallery.

Sections 3 and 4 provide for the representation of the Bengal Government among the Trustees, and sections 5 and 6 empower the Trustees to assume the custody of the collections belonging to the Bengal Government, and to make over to that Government the land on which the School of Art and Art Gallery are to be built.

*The 25th May, 1886.*

S. BAYLEY.

S. HARVEY JAMES,

*Offg. Secretary to the Government of India.*





grant or refuse, either absolutely or on terms, any application for the arrest or imprisonment of the defaulter, or for his release from arrest or discharge from imprisonment.

[Act XIV, 1882, s. 287; 32 & 33 Vic., c. 82, s. 5.] **6. (1)** The High Court, with respect to Courts subordinate to it, and the Chief Controlling Revenue-authority, with respect to Courts subordinate to it, may, with the approval of the Local Government and the sanction of the Governor General in Council, make rules for regulating the procedure to be observed in inquiries for determining whether the case of a defaulter for whose arrest or imprisonment application has been made is a case coming within the exceptions specified in clauses (c) and (d) of section 4, or within either of those exceptions.

(2) Rules may be made under this section—

(a) for the territories administered by the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh, at any time after the passing of this Act, and

(b) for territories under the administration of any other Local Government, at any time after the publication of the notification extending this Act to those territories or to any class of debtors therein;

but rules so made shall not take effect until the Act comes into force in the territories for which they have been made.

(3) An authority making rules under this section shall, before making the rules, publish a draft of the proposed rules in such manner as the Governor General in Council, by notification in the Gazette of India, prescribes.

(4) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(5) The authority making the rules shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(6) A rule made under this section shall not take effect until it has been published in the local official Gazette.

(7) The publication in that Gazette of a rule purporting to be made under this section shall be conclusive proof that it has been duly made.

**7.** The operation of the enactment under which the defaulter is liable to

Provisions as to imprisonment under Act. arrest or imprisonment in any case coming within the exceptions specified in clauses

(b), (c) and (d) of section 4, or within any of those exceptions, or is entitled to release from the arrest or discharge from the imprisonment, shall be subject to the following provisions, namely:—

(a) the defaulter may be imprisoned for such term, not exceeding six months, as the Court directs;

(b) no allowance for the subsistence of the defaulter, or for supplying him with clothing or bedding, shall be payable by the person on whose application the order for the imprisonment of the defaulter is made;

(c) during the term of his imprisonment the defaulter shall be maintained at the

expense of the Government, and be subject, as nearly as circumstances admit, to the discipline prescribed in the case of a criminal prisoner undergoing simple imprisonment; [L. R. 19, Ch. D. 348.]

(d) notwithstanding the payment of the money in respect of which the decree or order was made, or any arrangement for the payment thereof or proof of present inability to pay it, or any expression of intention to apply for a declaration of insolvency, or any request by the person on whose application the order for the arrest or imprisonment was made, the defaulter shall not be released from arrest, or, if he is in prison and the term of his imprisonment is not fulfilled, be discharged from prison, without the order of the Court; [Act XIV, 1882, s. 287; 32 & 33 Vic., c. 82, s. 5.]

(e) an appeal from the order for the imprisonment of the defaulter, and from an order refusing his release or discharge under clause (d) of this section, shall lie— [Act XIV, 1882, s. 287; 32 & 33 Vic., c. 82, s. 5.]

(i) if the Court making the order is a Civil Court subordinate for the purposes of the Code of Civil Procedure to the District Court, then to the District Court, [XIV of 1882.]

(ii) if the Court making the order is any other Civil Court, then to the High Court, and

(iii) if the Court making the order is a Revenue Court, then to the authority to which appeals lie from orders of the Court relating to the execution of decrees, or, where those orders of the Court are final, to such authority as the Local Government may, by notification in the official Gazette, appoint in this behalf; [Act XIV, 1882, s. 287; 32 & 33 Vic., c. 82, s. 5.]

and the order passed on the appeal shall be final. [Act XIV, 1882, s. 287; 32 & 33 Vic., c. 82, s. 5.]

**8.** Where the Court is of opinion that the defaulter has been guilty of any offence under the Indian Penal Code or under any enactment for the time being in force for the punishment of fraudulent debtors, it may, if it thinks fit, instead of ordering his imprisonment under this Act, send him to a Magistrate to be dealt with according to law. [Act XIV, 1882, s. 287; 32 & 33 Vic., c. 82, s. 5.]

**9.** Notwithstanding anything in Chapter XXXIV of the Code of Civil Procedure, or any other enactment, a defendant in a suit for money only who has been arrested before judgment shall not, as such, either be required to give security for his appearance at any time after the day on which judgment is given, or, if he has been committed to prison, be detained in prison after that day: [Act XIV, 1882, s. 287; 32 & 33 Vic., c. 82, s. 5.]

Special provisions with respect to arrest before judgment. XXXIV of the Code of Civil Procedure, or any other enactment, a defendant in a

suit for money only who has been arrested before judgment shall not, as such, either be required to give security for his appearance at any time after the day on which judgment is given, or, if he has been committed to prison, be detained in prison after that day:

Provided that, if judgment is given against the defendant, and the decree-holder applies, on the day on which judgment is given, for the enforcement of the decree by the imprisonment of the judgment-debtor, the Court may require the judgment-debtor to give such security as it thinks

[Act XIV, 1882, s. 342. Act XII, 1881 s. 103.]

[Act XIV, 1882, s. 339; Act XII, 1881, ss. 165 and 166; & Act XXVI, 1870, s. 30.]

[32 & 33 Vic., c. 82, s. 5.]

[Act XIV, 1882, s. 287; 32 & 33 Vic., c. 82, s. 5.]

[Act XIV, 1882, s. 287; 32 & 33 Vic., c. 82, s. 5.]

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[Act XIV, 1882, s. 287; 32 & 33 Vic., c. 82, s. 5.]

[Act XIV, 1882, s. 287; 32 & 33 Vic., c. 82, s. 5.]

sufficient for his appearance at any time when called upon while the application is pending, and, if he fails to give the security, may commit him to prison, or place him in the custody of an officer of the Court, until the disposal of the application.

[Act XIV,  
1882, s. 349.]

10. Nothing in this Act shall affect the liability to arrest and imprisonment of any person for whose arrest in execution of a decree or order a warrant has been issued by a Civil or

Saving of proceedings antecedent to commencement of Act.

Revenue Court before this Act comes into force in the territory in which the Court is established.

11. The provisions of this Act shall bind the [L. R. 3 E. D. 47.]  
Act to bind the Crown.

12. All powers conferred by this Act may be exercised from time to time as occasion requires.  
Powers exercisable from time to time.

## STATEMENT OF OBJECTS AND REASONS.

### *Imprisonment for Debt in India.*

A decree or order for the payment of money may be enforced in India by the imprisonment of the judgment-debtor (Act XIV of 1882, s. 254). The Court has a discretionary power to refuse execution at the same time against the person and property of the judgment-debtor (s. 230), but has no discretionary power to refuse execution either against person or against property at the option of the creditor. When an application for execution of a decree is presented, it must, if it is not barred by efflux of time and is otherwise in order, be admitted, and then the Court must order execution of the decree according to the nature of the application (s. 245). The Court cannot refuse to issue its warrant for the execution of the decree unless it sees cause to the contrary (s. 250), and "cause to the contrary," as interpreted by the Courts, means some cause which deprives the decree-holder of the right to execute, or to execute against the party against whom execution is sought, or to execute in the mode prayed for.

2. A judgment-debtor may, when arrested, obtain immediate release by payment of the debt; but if he does not, he must be brought at once before the Court (ss. 336-337).

3. The Local Government may by notification\* direct that whenever a judgment-debtor is arrested in execution of a decree for money, and brought before the Court, the Court shall inform him that he may apply, under Chapter XX of the Code, to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of his application, and if he places all his property in possession of a receiver appointed by the Court (s. 336).

\* Notifications have been issued under this section by all Local Governments except Hyderabad and Coorg.

4. If the judgment-debtor expresses his intention so to apply, and furnishes sufficient security that he will appear when called on, and that he will, within one month, apply to be declared an insolvent, the Court is to release him from arrest. But if he fails so to apply, the Court may either direct the security to be realised, or commit him to prison in execution of the decree (s. 336).

5. A person is not to be imprisoned in execution of a decree for more than six months, or, if the debt does not exceed fifty rupees, for more than six weeks (s. 342).

6. Whilst he is in prison, a monthly allowance must be paid for his subsistence according to scales fixed by the Local Government. The allowance is to be supplied by the decree-holder, and is to be deemed costs in the suit (ss. 338 to 340).

7. He is to be discharged from prison—

- (a) on the amount mentioned in the warrant of committal being paid to the officer in charge of the prison, or
- (b) on the decree being otherwise fully satisfied, or
- (c) at the request of the person on whose application he has been imprisoned, or
- (d) on default in the payment of the allowance for his subsistence, or
- (e) on his being declared an insolvent, or
- (f) on the expiration of the term of his imprisonment (s. 341).

His discharge from prison does not discharge him from his debt, but he cannot be re-arrested under the same decree (s. 341).

8. By the Presidency Small Cause Courts Act, XV of 1882, the provisions of the Code of Civil Procedure are applied, with modifications and exceptions, to the procedure in the Small Cause Courts at Calcutta, Madras and Bombay. Among the provisions not so applied are those which relate to the release of an arrested judgment-debtor on his expressing an intention to apply for a declaration of insolvency. Chapter XX of the Code, relating to insolvent judgment-debtors, is also not applied to these Courts. (See s. 23 and sched. II.)

9. The Act, however, contains certain special provisions with respect to an arrested judgment-debtor. Under section 29 the Court may release him from arrest on his giving security for payment. And under section 30, if it appears to the Court that a judgment-debtor under its decree is unable, from sickness, poverty or other sufficient cause, to pay the amount of the decree, or of any instalment under the decree, the Court may, from time to time,\* for such time and on such terms as it thinks fit, suspend the execution of the decree, and release the debtor, or make such order as it thinks fit.

10. In the four districts of the Dekkhan to which the Dekkhan Agriculturists' Relief Acts apply arrest and imprisonment for debt have been abolished in the case of agriculturists.\* And certain special Acts for the relief of embarrassed landholders contain provisions protecting the debtor from arrest or imprisonment in respect of the debts to which the Acts apply.

\* "No agriculturist shall be arrested or imprisoned in execution of a decree for money passed whether before or after this Act comes into force."—(Act XVII of 1870, s. 21, as amended by Act XXII of 1882, s. 8.)

#### *Imprisonment for Debt in England.*

11. Imprisonment for debt was abolished in England by the Debtors Act of 1869 (32 & 33 Vic., c. 62), except in the following cases:—

- (1) default in payment of a penalty, or sum in the nature of a penalty, other than a penalty in respect of a contract;
- (2) default in payment of a sum recoverable summarily before a Justice or Justices of the Peace;
- (3) default by a trustee or person acting in a fiduciary capacity and ordered to pay by a Court of Equity any sum in his possession or under his control;
- (4) default by a solicitor in payment of costs, when ordered to pay costs for misconduct as such, or in payment of a sum of money, when ordered to pay the same in his character of an officer of the Court;
- (5) default in payment for the benefit of creditors of any portion of a salary or other income, in respect of the payment of which any Court having jurisdiction in bankruptcy is authorized to make an order;
- (6) default in payment of sums in respect of the payment of which orders may be made under the Act (that is, cases of contumacious refusal under section 5 of the Act, see para. 14).

12. The term of imprisonment in these excepted cases must not exceed one year (s. 4).

13. In cases (3) and (4) the Court has power to enquire into the case,\* and at discretion to grant or refuse an order for arrest or imprisonment (41 & 42 Vic., c. 51, s. 1).

14. Under section 5 of the Act of 1869, a Court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt, or instalment of any debt, due from him in pursuance of any order or judgment of that or any other competent Court. But the power is not to be exercised unless it is proved to the satisfaction of the Court that the person making default has, or has had, since the date of the order or judgment, the means to pay the sum in respect of which he has made default, and has refused or neglected to pay it. "Proof of the means of the person making default may be given in such manner as the Court thinks just, and for the purposes of such proof the debtor and witnesses may be summoned and examined on oath, according to the prescribed rules." A summons under this section is usually called a judgment summons.

15. It will be observed that all the cases in which a debtor is liable to imprisonment under the Act of 1869 involve some degree of delinquency.† And it has been held by high authority‡ that the Act was distinctly intended for the purpose of punishing fraudulent or dishonest debtors.

16. Sums recoverable summarily before Justices, or, as they are called in modern statutory language, Courts of summary jurisdiction, are usually fines. But as ordinary civil debts are in some cases so recoverable, it has been provided by the Summary Jurisdiction Act, 1879 (42 & 43 Vic., c. 49, section 35) that an order of a Court of summary jurisdiction for the payment of a civil debt is not to be enforced by imprisonment, unless the case is such as would make the debtor liable to imprisonment under section 5 of the Debtors Act, 1869.

#### *Imprisonment for Debt in Scotland.*

17. In Scotland imprisonment for debt for sums under £5-6-8 was abolished in 1835 by 5 & 6 Wm. IV, c. 70, but alimentary debts (that is, debts for the support of the debtor's wife or children) were excepted from the operation of that Statute. In 1880 was passed the Debtors (Scotland) Act, 1880 (43 & 44 Vic., c. 34), which enacts, by section 4, that,

"with the exceptions hereinafter mentioned, no person shall, after the commencement of this Act, be apprehended or imprisoned on account of any civil debt.

\* Lord Hatherley, L. C., in *Middleton v. Chichester*, L. R. 4 Ch. 152.

† *Jessel, M. B.*, in *Marrie v. Ingram*, L. R. 13 Ch. Div. 338.

‡ *under the Act of 1869 involve some degree of delinquency.*† And it has been held by high authority‡ that the Act was distinctly intended for the purpose of punishing fraudulent or dishonest debtors.

"There shall be excepted from the operation of the above enactment—

- (1) taxes, fines or penalties due to Her Majesty, and rates and assessments lawfully imposed or to be imposed;
- (2) sums decreed for aliment;

"Provided that no person shall be imprisoned in any case excepted from the operation of this section for a longer period than twelve months."

The same Act contains provisions for the relief of insolvent debtors and for the punishment of fraudulent debtors.

18. By the Civil Imprisonment (Scotland) Act, 1842 (15 & 46 Vic., c. 42), imprisonment for alimentary debts was abolished, except in cases where there is a wilful failure to obey the decree for the debt (ss. 3 and 4), and the maximum term of imprisonment for failure to pay rates or assessments was reduced to six weeks (s. 5).

*Imprisonment for Debt in Ireland.*

19. In Ireland the law as to imprisonment for debt is regulated by the Debtors Act (Ireland), 1872 (35 & 36 Vic., c. 57), as amended by 41 & 42 Vic., c. 54, and is practically identical with the English law.

*Proposals for amendment of Indian Law.*

20. On the 17th November, 1881, a circular was addressed by the Government of India to all Local Governments and Administrations, stating that the Government of India had under consideration the question of amending the provisions of the Code of Civil Procedure bearing upon the question of the arrest of *pardānashin* women in execution of the decrees of Civil Courts, but that before coming to any final conclusion on the subject the Governor General in Council thought it desirable to deal with the larger question of abolishing imprisonment for debt, and for this purpose to enquire whether sufficient reasons exist for the continued maintenance in India of the present system. Local Governments and Administrations were accordingly requested to favour the Government of India with a full expression of their opinion on the matter.

21. The replies to the circular disclosed much difference of opinion as regards the advisability of maintaining in India the present system of imprisonment for debt.

22. In favour of the maintenance under existing circumstances of the present system of imprisonment for debt were the Madras Government, the Madras High Court, the Bombay Government, the Bombay High Court, the Calcutta High Court, the Calcutta Chamber of Commerce and the Trades Association, Calcutta (unless a change were accompanied by the enactment of a stringent bankruptcy law), the British Indian Association, Calcutta, the Board of Revenue, North-Western Provinces, the Punjab Chief Court, the Chief Commissioner of the Central Provinces, the Chief Commissioner of Assam (provided the law were so altered as to permit the issue of process against the person only after all means of realising the decree by process against property have been exhausted), and the Chief Commissioner and the Judicial Commissioner of Coorg. The arguments which they advanced appear to be in the main the following:—

- (a) that the total abolition of imprisonment for debt in India would be premature, and would remove from the Statute Book the only check upon the fraudulent alienation of property by solvent but dishonest debtors;
- (b) that legislation has proceeded quite far enough in relief of the judgment-debtor,

\* Sir C. Sargent, of the Bombay High Court, wrote:—

"The legal incidents of the undivided Hindu family, the minute distribution of property caused by the Muhammadan law of descent, and, though last not least, the practice of creating benami titles so common in this country, afford the dishonest debtor endless opportunities of baffling the efforts of the judgment-creditor to attach his property."

while there are in India special difficulties in executing a decree by attachment of property when the judgment-creditor is a member of an undivided\* family. Creditors are not, it is said, in the habit of proceeding to extremities unless the debtor has the means of liquidating a portion at least of the debt. The men who go to prison are

for the most part those who obstinately refuse to pay their debts, and cases of imprisonment for debt are not numerous;

- (c) that the abolition of imprisonment for debt would deprive lenders of personal security, would thereby depreciate credit, and would involve an increase in the rate of interest, already very high. In the case of agriculturists this might seriously impair their ability to pay the land-revenue;
- (d) that abolition of imprisonment for debt should only be attempted when the habits of secrecy, engendered by centuries of oppression, have partly worn away, and when transactions are open and the registration of deeds and bonds has become habitual. When the debtor's property can be easily traced and seized in execution of a decree, then it will be reasonable and right to withhold execution on the body of a pauper debtor, except as a distinctly exceptional and penal measure in the case of fraud.



23. In support of the abolition of imprisonment for debt were the following authorities:—

- (a) the Advocate General of Bengal, who advocated the introduction of the English system, because there is no reason why the matter should not be regulated in India as in England, if proper exceptions and limitations, as contained in the English Debtors Act of 1869, are prescribed, and because the abolition of imprisonment for debt would not cause any public injury, while, on the other hand, the present system in most instances operates only as a means of oppression, to the total ruin of the party imprisoned and of his family;
- (b) the Bengal Government, which, while not prepared to resist the opinions of the local officers that abolition would at present be premature, thought that, if an alteration of the Bankruptcy law were at any time undertaken, measures might then be adopted for the abolition of imprisonment for debt in cases where fraud is not established against the judgment-debtor;
- (c) the North-Western Provinces and Oudh Government, which regarded the existing practice of placing in the creditor's hands the power of selecting his own method of coercion as a relic of the old semi-barbarous debt laws which has now been eliminated from almost every civilized code of judicial procedure. The present system operates with severity against all debtors, honest and dishonest, indiscriminately. The power of subjecting a debtor to arrest and imprisonment should be entrusted not to the decree-holder, but to the Courts, and its exercise should be limited to cases where clear proof exists of fraudulent and contumacious attempts on the part of the judgment-debtor to defeat the operation of a decree. Imprisonment is especially hard on the cultivator and working-man, whom it deprives of their means of subsistence and of providing for their families;
- (d) the North-Western Provinces High Court, which advocated the abolition of imprisonment for debt, as it is doubtful whether "any useful purpose is served by the perpetuation in this country of that remnant of barbarism";
- (e) the Punjab Government, which believed that there is some reason to fear that, under the present system, creditors occasionally make use of the law to gratify vindictive feelings or personal spite, and to coerce debtors to sell their land and property at a price below its proper value or to relinquish their just rights. Discretionary power ought to be expressly allowed to the Civil Courts, imprisonment not being resorted to as an ordinary process of execution of a decree, unless the Court is satisfied that there has been fraud or wilful concealment of property;
- (f) the Chief Commissioner of British Burma, who pointed out that the imprisonment of debtors who are paupers, but who are not fraudulent, does no real good to any class, works directly and indirectly great harm to the poorer classes, and causes a distinct loss to the community at large. The practice of permitting such imprisonment has been gradually circumscribed among other civilized nations; among some nations it has absolutely ceased; and there is no reason why the way should not be paved for the disappearance of the system in India. Civil Courts should be allowed to grant execution against the body of judgment-debtors against whom there might be *prima facie* ground for presuming fraud or bad conduct, unless the presumption were rebutted by the judgment-debtor;
- (g) the Judicial Commissioner of British Burma and the Recorder of Rangoon, who were of opinion that imprisonment for debt should be abolished, except in case of fraud, which should be punished criminally. The Recorder recommended that the law as it now obtains in England should be applied to India;
- (h) the Resident at Hyderabad, who considered that the present system of imprisonment for debt is not wanted to compel payment, while it may be used to bring undue pressure to bear upon a debtor, especially in an agricultural country where interest in land is generally given as security for debts. He recommended that imprisonment for debt should be retained only to meet cases in which debtors abscond or endeavour to fraudulently evade meeting their obligations.

24. Thus, the preponderance of opinion was on the whole in favour of the maintenance of imprisonment for debt under the present condition of India, but a considerable and influential minority were in favour of its abolition.

25. The arguments on which the upholders of the present system rely fall into two classes: first, arguments which, if valid at all, are valid for England as well as for India; and secondly, arguments based on the special circumstances and conditions of India.

26. To arguments of the first class belongs the assertion that "to remove from the Statute Book the penalty of arrest and imprisonment in execution of a decree for money would be to paralyze the commerce and trade of the country." The same objection was made in

\* See Lord Cottenham's speech in 1814 on the Creditors and Debtors Bill; Hansard, 74, page 153.

England, first to the abolition of arrest on mesne process,\* and afterwards to the abolition of arrest on final process. The power of arrest was removed, and neither commerce nor trade shewed any symptoms of paralysis.

27. Those who uphold imprisonment for debt, not as being generally expedient, but as being specially required for India, do so mainly on two grounds: first, the complexity and obscurity of Indian titles to property; and, secondly, the exceptional prevalence of fraud in India, and the exceptional difficulties of detecting it.

As to the first ground, it has been remarked that if it is wrong to allow a debtor to pledge his person as security for his debts, it is not the less wrong because, owing to the defect of Indian property law, he finds difficulty in giving a satisfactory security over his property.

In the argument based on the prevalence of, and difficulty of detecting fraud, there is undoubtedly much force, though it may be doubted whether the obstacles which can be placed in the way of a creditor realizing his debts are not as great in England as in India. But, however this may be, to make an honest, though needy, debtor liable to imprisonment, simply because fraudulent debtors are numerous and difficult to detect, appears to be as unjust as it would be to make homicide by misadventure punishable by death, simply because the crime of murder was rife and hard to prove.

28. There are in the opinion of the Government of India two principles which ought to be observed in every law of debtor and creditor. The Courts ought not to give effect to any pledge by a debtor either of his person or of the bare necessities of life. The debtor ought not to be allowed, by his own action, supplemented by the action of the Courts, either to deprive himself of his personal liberty, or to reduce himself to starvation. If he cannot obtain credit except on one or other of these securities, it is better that he should not obtain credit at all. Experience acquired in the Dekkhan goes to show that these principles are applicable to India as to England. The Code of Civil Procedure recognises one of these principles by exempting from seizure for debt the debtor's bare means of subsistence. But this recognition is nullified by the refusal to adopt the principle of exempting the debtor's person from seizure. Of what use is it to reserve by law to the debtor the bare necessities of life, when he can be compelled to give them up by the threat of imprisonment? By those who advocate the retention of the present system, much reliance is placed on the very small proportion of actual imprisonments to warrants of arrest; and the inference drawn from this proportion is that the law, though harsh in theory, produces no hardships in practice. But there is reason to believe that, in the great majority of cases, exemption from arrest is purchased either by renewal of bonds on extortionate terms, or by surrender of property which the law has exempted from seizure, or by surrender of property which does not belong to the debtor at all, but to his relations or friends. In other words, the law enables a creditor to do indirectly what it forbids him to do directly.

29. It is said that the honest debtor has an easy way out of prison through the door of insolvency. But in the first place, the honest debtor ought not to be sent to prison at all; and in the next place, the door which is provided for his release is, for some reason or other, very rarely used. There is, or was until recently, a strong concurrence of opinion to the effect that the Insolvency Chapter of the Code of Civil Procedure is practically a dead letter. As to the causes of its failure,—whether it is to be accounted for by the preliminary proceedings being unnecessarily cumbrous or expensive, or by the difficulty of satisfying the Court under section 351 that the debtor has not been guilty of any kind of misconduct, or by ignorance of the law and of the modes of relief available to debtors,—opinions differ; but about the fact of failure there appears to be no difference.

30. Since 1883 the Government of India has received and published reports obtained from Her Majesty's representatives abroad on the systems of imprisonment for debt in force in the various countries to which they are accredited. Those reports showed that imprisonment for debt has been abolished in nearly all civilized countries.

31. Having regard to the state of the law in the United Kingdom, to those reports, to the success which has attended the abolition of imprisonment for debt in the case of agriculturists to whom the Dekkhan Agriculturists' Relief Acts apply, to some expressions to be found in the opinions of the authorities who considered the draft Bankruptcy Bill of 1885, and to the advocacy by the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh, and by the Chief Justice and Judges of the High Court of Judicature for the North-Western Provinces, of the entire abolition of the process of arrest for debt, so far as it is a process that can be set in motion at the discretion of the creditor, and of the enforcement of the process being restricted to cases in which the Courts are satisfied that there have been fraudulent and contumacious attempts to defeat the operation of decrees, the Government of India has decided to introduce a Bill giving effect tentatively and, in the first instance, within a limited area to the policy which dictated the English Act of 1869, and is believed by several authorities of weight to be applicable to India.

#### *Provisions of Bill.*

32. Sections 1 and 2.—It is proposed that the measure shall apply in the first instance to the North-Western Provinces and Oudh, and be extendible to other Provinces, or to particular classes of debtors in other Provinces, by Local Governments with the previous sanction of the Governor General in Council.

From the opinions recorded by the Chief Commissioner and by Mr. MacEwen, the Officiating Recorder of Rangoon, on the draft Bankruptcy Bill of 1885, and by the Recorder, Judicial Commissioner and other authorities, European and Native, on the circular of 1881, there appears to be a strong feeling in Burma in favour of abolishing imprisonment for debt where the debtor has not been guilty of fraud. But it is considered desirable that the proposed Act should apply in the first instance to the territories under one Local Government, and that its effect there should be ascertained before the Act is extended to other parts of the country.

The date on which the Act is to come into force in the North-Western Provinces and Oudh is the 1st of January, 1888. If therefore the Bill is passed during the present year, decree-holders will have more than twelve months within which they may proceed against their judgment-debtors under the provisions of the Code of Civil Procedure. In England the period which elapsed between the passing and the coming into force of the Debtors Act 1869, was less than five months.

33. *Section 4.*—This section is based on section 4 of the Debtors Act, 1869, but applies only to arrest and imprisonment for default in compliance with decrees and orders of Civil and Revenue Courts. Clause (c) is specially designed to check those fraudulent alienations of property by solvent but dishonest debtors which are relied on by the opponents of any mitigation of the existing law as the main justification of imprisonment for debt.

34. *Section 5.*—This section, following the 41 & 42 Vic., c. 54, permits the Court to refuse, either absolutely or on terms, an application for the arrest or imprisonment, or for the release or discharge from arrest or imprisonment, of a defaulter who is a trustee or person acting in a fiduciary capacity and is required, as such, to pay any money which is in his possession or under his control, or any money for which he is accountable and of which he has not discharged himself.

The origin and object of this clause are stated as follows by Jessel, M. R., in *Morris v. Ingram* (L. R. 13 Ch. D. 313):—

"Then we come to the Amendment Act of 1878, which was passed to meet a special class of cases, and the history of that Act was this: An application was made before me for the imprisonment of a trustee who had been ordered to pay a sum of money. It was a very hard case, one of an unintentional breach of trust; and though the man was actually dying, I had no alternative but to make an order. Then I had various other cases before me which led me to regret that the Court had no discretion, for it not unfrequently happened that a person who came in strictness under the first class of offences was not guilty of any moral offence. Under these circumstances I thought it would be wise and prudent that a discretion should be given to the Courts to deal with exceptional cases, but not with the intention of repealing the existing Act. Mr. Marten, being a member of the Legislature, then adopted my suggestion, and procured this Amendment Act to be passed."

\* That is to say, the defaults specified in 33 & 34 Vic., c. 62, s. 4.

tion should be given to the Courts to deal with exceptional cases, but not with the intention of repealing the existing Act. Mr. Marten, being a member of the Legislature, then adopted my suggestion, and procured this Amendment Act to be passed."

35. *Section 6.*—This section empowers the High Court and the Chief Controlling Revenue-authority to make rules for regulating the procedure to be followed in the Courts subordinate to them respectively in inquiries as to the liability of persons to arrest and imprisonment on the ground of fraud or contumacy.

36. *Section 7.*—This section modifies the operation of enactments authorising arrest and imprisonment for default in compliance with decrees and orders of Civil and Revenue Courts for payment of money.

Clause (a), following the Code of Civil Procedure, limits the term of imprisonment to six months, notwithstanding that section 163 of the North-Western Provinces Rent Act, 1881, authorises imprisonment in certain cases for so long a period as two years.

Clause (b) relieves the decree-holder of the liability to maintain his judgment-debtor while in prison. If imprisonment is retained, not as a mode of enforcing payment but simply as a punishment, it will hardly be possible to continue the liability. This liability existed under the old Insolvency Law in England, and the Act which imposed it was once described as giving the creditor "the power of imprisoning and tormenting his debtor at the expense of 3s. 6d. per week."\* If it is abolished, great care should be taken that imprisonment is not inflicted except in cases of misconduct which deserve punishment.

\* Hansard, 74, page 451.

Clause (c) requires that the defaulter, though in the civil jail, shall nevertheless be subject, as nearly as circumstances admit, to the discipline prescribed in the case of a criminal prisoner undergoing simple imprisonment. Where a person is ordered to pay a fine, the nature and term of his imprisonment will be regulated by the general law. This clause relates to the other cases in which a debtor is liable to imprisonment. Those cases, as before observed, all involve some degree of delinquency (L. R. 6 Ch. 157), and the imprisonment contemplated by the Bill, as by the English Act (L. R. 13 Ch. D. 343), is simple, that is, without hard labour. The effect of this clause will be to deprive the defaulter, as a civil prisoner, of the privilege of maintaining himself, and purchasing or receiving from private sources food, clothing, bedding, and other necessities (Act XXVI of 1870, s. 34).

Clause (d) provides that, except where the arrest or imprisonment is for default in payment of a fine, the defaulter, when once arrested or imprisoned, shall not be released from

arrest, or discharged from prison, without the order of the Court. The Court may grant the order or refuse it. If it refuses the order, the defaulter may appeal.

Clause (e) so far modifies clause (29) of section 583 of the Code of Civil Procedure as to admit of an appeal being preferred from an order for imprisonment in execution of a decree.

37. *Section 8.*—This section follows section 352 of the Code of Civil Procedure in providing that where the Court is of opinion that the defaulter has been guilty of an offence against the Indian Penal Code or any special enactment for the punishment of fraudulent debtors, it may, instead of ordering his imprisonment in the civil jail, send him to a Magistrate to be dealt with according to law.

38. *Sections 9 and 10.*—These sections contain special provisions with respect to arrest before judgment, and save proceedings taken before the Act comes into force.

39. *Section 11.*—It has been decided *In re Heavens Smith* (L. R. 2 Ex. D. 47) that the English Debtors Act of 1869 does not apply to a case in which the defaulter is a debtor to the Crown. It is proposed that the Indian Act shall have the like effect as against the Crown where a decree or order for payment of money is made in its favour by a Civil or Revenue Court, as it will have against a subject.

40. The question of giving the Courts a discretionary power to refuse an order for the arrest and imprisonment of a judgment-debtor, or at least of a female judgment-debtor, will be considered when next the Code of Civil Procedure comes under revision.

The 9th June, 1886.

C. P. ILBERT.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.



## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 9th June, 1886:—

NO. 10 OF 1886.

*A Bill to declare certain allowances collectively known as Oudh Wasikas to be pensions within the meaning of the Pensions Act, 1871.*

WHEREAS, on the death of Her Highness the Bahu Begam, His Highness the Nawab Vazir of Oudh delivered to the British Government a sum of money with intent that the interest accruing thereon should, in compliance with the wishes of Her Highness the Bahu Begam as expressed in a Deed of Deposit executed by her in the year 1818, be applied by the British Government to the payment of certain pensions, which pensions are known as the Amanat Wasikas;

And whereas in the year 1818 the said Government guaranteed the payment of certain pensions to persons connected with the Khás Mahál of Her Highness the Bahu Begam, which pensions are known as the Zamanat Wasikas;

And whereas in the years 1814, 1825, 1829 and 1838 loans, known respectively as the 1st, 3rd, 5th and 6th Oudh loans, were made by the Rulers of Oudh to the Hon'ble the East India Company, with intent that the interest accruing thereon should be applied by the said Government to the payment of certain pensions, which pensions are known as the Loan Wasikas;

And whereas the said Government reserved to itself the right of commuting the pensions to, the

payment of which the interest accruing on the 5th Oudh loan was to be applied;

And whereas the Amanat, Zamanat and Loan Wasikas have been regarded as pensions to which the Pensions Act, 1871, applies, and rules respecting them have been made and published under section 14 of that Act;

And whereas, since the making and publication of the rules, doubt has been expressed whether the said Wasikas are pensions within the meaning of the Pensions Act, 1871;

And, whereas it is expedient to declare them to be pensions within the meaning of that Act;

It is hereby enacted as follows:—

Short title.

1. This Act may be called the Oudh Wasikas Act, 1886.

2. The allowances respectively known as the Amanat Wasikas, the Zamanat Wasikas and the Loan Wasikas are, within the meaning of the Pensions Act, 1871, pensions conferred by a former Government and continued by the British Government on political considerations.

3. Notwithstanding anything in section 10 of the said Act, the Local Government may, without the consent of the holder of a pension payable out of the interest accruing on the 5th Oudh loan, order the whole or any part of the pension to be commuted on the terms referred to in the fourth article of the treaty executed with respect to that loan on the first day of March, 1829, and ratified by the Governor General in Council on the eighth day of May in the same year.

## STATEMENT OF OBJECTS AND REASONS.

CERTAIN allowances, locally known as Amanat Wasikas, Zamanat Wasikas and Loan Wasikas, are paid by the British Government to the descendants of certain relatives and dependants of the Bahu Begam and the Vazirs and Kings of Oudh. Till the year 1880 no doubt was entertained that these allowances were pensions within the meaning of the Pensions Act, 1871. In that year it became desirable on financial grounds to commute one of the largest of them, and a dispute having arisen as to the person entitled to receive the capitalized amount of the allowance, the Government had to consider whether it could safely pay the amount under cover of the Pensions Act to the person who appeared to be best entitled. The Hon'ble the Advocate General inclined to the opinion that a Wasika was a pension within the meaning of the Act, but thought there was a good deal to be said in favour of the opposite view. As the sum involved was so very large that the Government would not have been justified in incurring any risk in disposing of it, a special Bill was introduced into the Legislative Council and passed as the Táj Mahál's Pension Act, 1881.

This step, which the Government was compelled to take for its own protection, necessarily suggested a doubt as to the applicability of the Pensions Act to Wasikas.

As it is expedient on political considerations that there should be no room for question as to the applicability of the Act to Wasikas, the Government has decided to introduce this Bill to remove the doubts created by the legislation of 1881.

*The 9th June, 1886.*

J. W. QUINTON.

S. HARVEY JAMES,

*Offl. Secretary to the Government of India.*



# The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, JUNE 26, 1886.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was referred to a Select Committee of the Council of the Governor General of India for the purpose of making Laws and Regulations on the 9th June, 1886:—

No. 7 OF 1886.

*A Bill to consolidate and amend the law relating to rent in Oudh.*

NOTE.—The 'marginal quotations' refer to portions of sections of the Oudh Rent Act omitted from the Bill.

WHEREAS it is expedient to consolidate and amend the law relating to rent in Oudh and to other matters connected therewith; It is hereby enacted as follows:—

### CHAPTER I.

#### PRELIMINARY.

1. This Act may be cited as the Oudh Rent Act, and shall extend only to Oudh.

2. Act XIX of 1868 is hereby repealed, but all notifications published and rules made under the repealed Act shall, so far as they are consistent with the present Act, be deemed to have been published and made hereunder.

3. In this Act, unless there be something repugnant in the subject or context,—

"Oudh" means the territories under the administration of the Chief Commissioner of Oudh at the time of the passing of this Act:

"Court" means any judicial officer presiding in a Court of Revenue for the disposal of matters under this Act:

*The Oudh Rent Bill.**(Chapter I.—Preliminary.—Section 3.)*

- "Suit." "suit" means a suit under this Act :
- "Assistant Commissioner" includes an Extra Assistant Commissioner :
- "Land." applies only to land assessed to the land-revenue, and includes land whereof the revenue has been assigned by Government ; it also includes the ungathered produce of land, whether spontaneous or otherwise, and whether growing in earth or water :
- "revenue" means the money payable to the Government on account of land :
- "rent" means the money, or the portion of the produce of land, payable on account of the use or occupation of land, or of any right in land, or on account of the use of water for irrigation :
- "proprietor" does not include an under-proprietor. Where there are two private rights of property, one superior and the other subordinate, in the same land, "proprietor" means the holder of the superior right only :
- "Proprietary right." "proprietary right" means a proprietor's right in land :
- "under-proprietor" means any person possessing a heritable and transferable right of property in land for which he is liable to pay rent :
- "Under-proprietary right." "under-proprietary right" means an under-proprietor's right in land :
- "tenant" means any person, not being an under-proprietor, who is liable to pay rent. In the following sections of this Act, 7, 10, 13, 14, 15, 18, 19, 26, 38, 39, 40, 41, 42, 43, 43 (A), 83, 101, 111 and 116, but in no others, the expression "tenant" shall be held to include a *thikadár* or person to whom the collection of rents in a village or portion of a village has been leased by the landlord :
- "landlord" means any person to, whom an under-proprietor or tenant is liable to pay rent :
- "representative" means an heir or any other person taking by operation of law or by will a beneficial interest in the property of a deceased person. It includes the guardian of a minor and the legal curator of a lunatic or idiot : and
- "*hambardár*" means any person who has executed an engagement for the payment of the revenue to Government, or for the payment to a landlord of the rent due from under-proprietors holding a sub-settlement :
- "prescribed" means prescribed from time to time by the Local Government by rules made under this Act.



*The Oudh Rent Bill.**(Chapter II.—Of certain Rights and Liabilities of Landlords, Under-proprietors and Tenants.—Sections 4-7.)*

[Art VII, 1885, section 178.]

4. Nothing, in any contract made between a landlord and a tenant before or after the passing of this Act shall entitle a landlord to eject a tenant or enhance his rent otherwise than in accordance with the provisions of this Act.

Nothing in any contract made between a landlord and a tenant after the passing of this Act shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them.

Provided that nothing in this section shall affect the terms or conditions of a lease granted bona fide for the reclamation of waste land.

## CHAPTER II.

## OF CERTAIN RIGHTS AND LIABILITIES OF LANDLORDS, UNDER-PROPRIETORS AND TENANTS.

*Right of Occupancy.*

5. Tenants who have lost all proprietary right, whether superior or subordinate, in the lands which they hold or cultivate, shall, so long as they pay the rent payable for the same according to the provisions of this Act, have a right of occupancy under the following rule:—

Every such tenant who, within thirty years next before the thirteenth day of February, 1856, has been, either by himself, or by himself and some other person from whom he has inherited, in possession as proprietor in a village or estate, shall be deemed to possess a heritable but not a transferable right of occupancy in the land which he cultivated or held in such village or estate on the twenty-fourth day of August, 1868: provided that such land has not come into his occupation, or the occupation of the person from whom he has inherited, for the first time since the said thirteenth day of February, 1856: provided also that no such tenant shall have a right of occupancy in any village or estate in which he or any co-sharer with him possesses any under-proprietary right.

Nothing contained in the former part of this section shall affect the terms of any agreement in writing hereafter entered into between a landlord and tenant.

5. (A). Nothing contained in section 5 shall be deemed to restrict the power of the landlord to confer on any persons other than those therein mentioned a right of occupancy in the lands which they hold or cultivate.

6. If a tenant having a right of occupancy be ejected, in accordance with the provisions of section 37, from the land in which he possesses such right, he shall thereupon lose his right of occupancy in such land.

*Tenants' Right to Pattas.*

7. Every tenant is entitled to receive from his landlord a patta or memorandum of the terms of the holding, signed by him.

*The Oudh Rent Bill.*

(Chapter II.—Of certain Rights and Liabilities of Landholders, Under-proprietors and Tenants.—Sections 8-13.)

or his authorized agent, and containing the following particulars:—

the quantity of land and, where the fields comprised in the *patta* have been numbered in a Government survey, the number of each field:

the term for which the *tenancy* is to run:

the amount of rent payable:

the instalments in which and the times at which the same is to be paid:

and, if the rent is payable in kind, the proportion of produce to be delivered, and the time, manner and place of delivery.

[any special conditions of the lease:]

8. Tenants having a right of occupancy are entitled to receive *pattas* having right of occupancy is entitled. at rates of rent determined in accordance with the provisions contained in sections 32, 33 and 34.

9. Tenants not having a right of occupancy are entitled to *pattas* for the terms and at the rates prescribed in Chapter IV (B) of this Act.

*Landlords' Right to Counterparts.*

10. Every landlord who grants a *patta* is entitled to receive from the tenant a counterpart executed by him.

II. *Vide* section 43 (A).

*Arrears of Revenue or Rent.*

12. Any instalment of revenue or rent which is not paid on or before the day when the same becomes due, whether under a written agreement or according to law or local usage, shall be deemed to be, for the purposes of this Act, an arrear of revenue or rent, as the case may be:

Provided that, unless the proprietor and under-proprietor shall have otherwise agreed in writing, the rent payable to the former by the latter shall be held to become due one month before the date fixed for the payment of the revenue on account of the village in which the land in respect of which such rent is payable is situate, and to be payable in the same number of instalments as the said revenue; and the amount of each instalment of such rent shall bear the same proportion to the whole of such rent payable for the year as the amount of each instalment of such revenue bears to the whole of such revenue payable for the year.

*Receipts.*

13. Receipts for rent and acknowledgments of the tender of rent shall specify the year or years on account of which it has been paid or tendered; and any refusal to make such specification shall be held to be a withholding of a receipt or acknowledgment.

If such receipt or acknowledgment is withheld from any under-proprietor or tenant without sufficient cause, he may recover compensation from the landlord, not exceeding the amount so paid or tendered.

*The Oudh Rent Bill.*

(Chapter II.—Of certain Rights and Liabilities of Landlords, Under-proprietors and Tenants.—Sections 14-15.)

*Deposit of Revenue or Rent in Court without Suit.*

[having a right of occupancy, or holding under an unexpired lease or under an agreement or decree]

14. If any co-sharer, under-proprietor, or tenant, shall, at the place where the revenue or rent of the land held or cultivated by him is usually payable, tender to the person authorized to receive the same payment of the full amount of such revenue or rent due in respect of such land, and if such amount is not accepted and a receipt in full forthwith granted, it shall be lawful for the co-sharer, under-proprietor or tenant, without any suit having been instituted against him, to deposit such amount in Court to the credit of the person authorized to receive it.

Such deposit shall, so far as regards the co-sharer, under-proprietor or tenant, and all persons claiming through or under him, operate as a payment then made to the *lambardar* or landlord of the amount so deposited.

15. The Court shall receive such deposits on the written application of the co-sharer, under-proprietor or tenant, or his recognized agent; the application shall bear a stamp of eight annas; and on such co-sharer, under-proprietor or agent making a declaration in the form set forth in Schedule A hereto annexed, or as near thereto as circumstances will admit, the Court shall give him a receipt for the deposit.

Such declaration shall be verified in the manner prescribed for the verification of plaints in the Code of Civil Procedure, and the provisions of sections 52 of the said Code shall apply to the person making the verification. XIV of 1882.

Upon receiving the money so deposited, the Court shall issue to the person to whose credit it has been deposited a notice in the form set forth in Schedule B hereto annexed.

Such notice shall be served by the proper officer, without the payment of any fee, upon the person to whom it is addressed, or upon his recognized agent.

In the absence of any such agent, it may be served by putting up a copy of the same at the court-house, and another copy at the ordinary place of residence, within the jurisdiction of the Court, of such person, or, if there be no such place, at the place where the revenue or rent is usually paid to the *lambardar* or landlord, as the case may be, for the land in respect of which the money has been deposited.

If the person on whom such notice is served, or his recognized agent, appears and applies that the money in deposit be paid to him, it shall immediately be paid accordingly.

*The Oudh Rent Bill.**(Chapter II.—Of certain Rights and Liabilities of Landlords, Under-proprietors and Tenants.—Sections 16-19.)*

16. Whenever a deposit has been made under the provisions of this Act, no suit shall be brought against the depositor or his representative on account of any revenue or rent which accrued due in respect of the land last hereinbefore mentioned prior to the date of the deposit, unless such suit is instituted within six months from the date of the service of the notice mentioned in section 15.

17. If, at the time of passing the decision in any such suit, the Court is satisfied that the full amount of revenue or rent due at the time of the deposit was tendered to, and was not accepted by, the lambardār or landlord or his recognized agent, as the case may be, or that a receipt or acknowledgment was withheld for such amount without sufficient cause, the Court may award to such depositor compensation from the lambardār or landlord, not exceeding the amount so paid or tendered.

If the Court be satisfied that the amount of the deposit was less than the amount of revenue or rent due, the Court shall pay the amount of the deposit to the lambardār or landlord, and shall make a decree for the balance due by the depositor.

*Illegal Enforcement of Payment of Rent.*

18. If payment of rent or of any sum in excess of the rent legally claimable is illegally enforced, and any under-proprietor or tenant institutes a suit to recover compensation for such enforcement, the Court may award to him compensation, not exceeding the sum of rupees two hundred, in addition to any amount for which it makes a decree in respect of such payment.

An award of compensation under the former part of this section shall not bar any prosecution to which the person enforcing such payment may be liable under any law for the time being in force.

*Abatement of Rent.*

19. No suit for an abatement of rent shall be brought by any under-proprietor or tenant, except on the ground that the area of the land has been diminished by diluvion, or on some ground specified in any lease, agreement or decree, under which he holds:

Provided that, if the under-proprietor hold a sub-settlement in a revenue-paying estate, no such abatement shall be allowed to the under-proprietor, unless a remission of revenue has been allowed on the same ground and by competent authority in the same estate.



*The Oudh Rent Bill.*

(Chapter II.—Of certain Rights and Liabilities of Landlords, Under-proprietors and Tenants.—Sections 20-21 (A).)

35 and 36]

[provided that if the under-proprietor hold a sub-settlement, or if the tenant hold a lease for a term of not less than five years, or have a right of occupancy in a revenue-paying estate, no such remission shall be allowed to him, unless a remission of revenue shall have been allowed on the same ground and by competent authority in the same estate]

[or unless it has been let to any other person by such landlord or agent]

*Remission of Rent.*

20. Notwithstanding anything contained in section 19 [the Court, in making a decree for an arrear of rent, may allow such remission from the rent payable by any under-proprietor or tenant as appears equitable, if the area of the land in his occupation has been materially diminished by diluvion or otherwise, or if the produce of such land has been diminished by drought or hail, or other calamity beyond his control, to such an extent that the full amount of rent payable by him cannot, in the opinion of the Court, be equitably decreed.

*Relinquishment of Land.*

21. Every tenant shall continue liable for the rent of the land in his holding, unless on or before the fifteenth of March in any year he gives notice in writing to the landlord or his recognised agent of his desire to relinquish such land, and relinquishes it accordingly [ . ].

If the landlord or his recognised agent refuse to receive such notice or to sign and deliver a receipt for the same, the tenant may, before the latest date prescribed for giving such notice, apply to the tahsildar or proper officer, and written notice of such desire shall thereafter be served on such landlord or agent, and the tenant shall pay the costs of service.

The notice shall, if practicable, be served personally on the landlord or agent; but if he cannot be found, service may be made by affixing the notice at his usual place of residence, or, if he does not reside in the district wherein the land is situate, at the *chaupal* or other conspicuous place in the village wherein the land is situate.

21. (A). If a tenant voluntarily abandons his holding without informing his landlord and without arranging for the cultivation of the holding, it shall be lawful for the landlord at any time after the fifteenth of May to enter on the holding. Before a landlord enters under this section, he shall file a notice in the prescribed form with the supervisor-kunbango, stating that he has treated the holding as abandoned and is about to enter on it accordingly.

When a landlord enters under this section, the tenant shall be entitled to institute a suit under section 83, clause 10, of this Act, to recover occupancy of the holding; and the Court shall, on being satisfied that the tenant did not voluntarily abandon his holding, order recovery of possession on such terms, if any, with respect

*The Oudh Rent Bill.**(Chapter II.—Of certain Rights and Liabilities of Landlords, Under-proprietors and Tenants.—Sections 22-25.)*

to compensation to persons injured and payment of arrears of rent as to the Court may seem just.

*Compensations for Tenants' Improvements.*

22. If any tenant, or the person from whom he has inherited, makes any such improvements on the land in his occupation as are hereinafter mentioned, neither he nor his representative shall be ejected from the same land, unless and until he or his representative, as the case may be, has received compensation for the [ ] improvements made on the land by him, or the person from whom he has inherited, or whom he represents [ ].

[outlay, in money or labour, or both, expended in making such]  
[within thirty years next before the date of such enhancement or ejection]

23. Except as provided in the next following section, no tenant shall be entitled to claim compensation for an improvement made subsequently to the passing of this Act without the written consent of the landlord.

24. If in any case the tenant apply to the landlord for his written consent to his making an improvement on his holding, and the landlord withhold or refuse to grant it, it shall be lawful for the tenant to apply to the Deputy Commissioner for sanction to make the improvement. The Deputy Commissioner, after taking into consideration any objections which the landlord may have to urge, either on the ground that—

- (a) the improvement is too costly or is unsuitable to the nature of the tenant's holding, or that
- (b) he is prepared to make such improvement himself,

shall grant sanction on such conditions as he may consider fair and equitable or refuse the application. No appeal shall lie against an order passed by the Deputy Commissioner under this section.

25. The word "improvements," as used in this Act, means works by which the annual letting value of the land has been, and at the time of demanding compensation continues to be, increased, and comprises—

1st.—The construction of works for the storage of water, for the supply of water for agricultural purposes, for drainage, and for protection against floods; the construction of wells; the reclaiming and clearing of waste lands and jungles, and other works of a like nature.

2nd.—The renewal or reconstruction of any of the foregoing works, or such alterations therein or additions thereto as are not required for maintaining the same, and which increase durably their value.

*The Oudh Rent Bill.**(Chapter III.—Commutation and Payment of Rent in kind.—Sections 25 A-28.)*

Principle on which compensation is to be estimated.

25 (A). In estimating the compensation to which a tenant is entitled regard shall be had—

- (a) to the amount by which the value, or the produce, of the holding, or the value of that produce, is increased by the improvement;
- (b) to the condition of the improvement and the probable duration of its effects;
- (c) to the labour and capital required for the making of such an improvement;
- (d) to any reduction or remission of rent or any other advantage given by the landlord to the tenant in consideration of the improvement; and
- (e) in the case of a reclamation, or of the conversion of unirrigated into irrigated land, to the length of time during which the tenant has had the benefit of the improvement.

Act VIII, 1885, section 83.

25. (B) When a Court has assessed the amount of the compensation due to a tenant under the last preceding section, it may, if both landlord and tenant desire that the compensation assessed, instead of being paid wholly in money, shall be made wholly or partly in some other way, proceed to give judgment according to the terms agreed upon between them.

Ditto. clause 2.

26. A landlord shall be entitled to make any improvement of the nature specified in section 25 on the holding of a tenant not having a right of occupancy with or without the consent of the tenant.

A landlord who proposes to make an improvement shall, if the work is to be constructed in the holding of any tenant, give notice to the tenant through the tahsildar.

*Survey and Measurement.*

27. Every landlord, his agents and surveyors, may at all reasonable times enter upon any land comprised in his estate for the purpose of surveying and measuring the same.

## CHAPTER III.

## COMMUTATION AND PAYMENT OF RENT IN KIND.

28. In any district in which a settlement of revenue is in progress, it shall be in the discretion of any officer employed in making or revising such settlement, in any case

*The Oudh Rent Bill.**(Chapter IV.—Enhancement and fixing Rates of Rent.—Sections 30-32.)*

in which the rent of a tenant having a right of occupancy is paid in kind, or by the estimated value of a portion of the crop, to compute, on the application either of the landlord or the tenant, such rent into a rent in money.

**30.** Wherever rent is taken by division of the produce in kind, or by estimate or appraisement of the standing crop, or other procedure of a similar nature, requiring the presence both of the tenant and landlord either personally or by a recognized agent, if either party neglect to be present at the proper period, or if a dispute arise between the parties regarding such division, estimate or appraisement, either party may present an application to the Court on a paper bearing a stamp of eight annas, requesting that a proper officer be deputed to make the division, estimate or appraisement.

**31.** On receiving such application, the Court shall issue a written notice to the other party to attend on the date and at the place specified in the notice, and shall depute an officer before whom the division, estimate or appraisement shall be made.

The award of such officer in respect of such division, estimate or appraisement shall be final, unless, within one month from the date thereof, either party institutes a suit to set it aside.

[The amount of rent thus fixed shall be binding upon the parties concerned.]

[All decisions already passed by any such officer, commencing rents in kind or by valuation to rents in money, shall, subject to the same appeal as is given by this Act in respect of decisions passed in suits, be binding on the parties concerned.]

**[29.]** The Chief Commissioner of Oudh may extend the provisions of section 28, to any district or portion of a district in which a settlement of revenue is not in progress ;

and may declare that officers are empowered to hear and decide cases under this section ;

and may make rules for the guidance of officers acting under this section and section 28, and, from time to time, [with the like sanction] alter and add to the rules so made :

Provided that such rules, alterations and additions are consistent with this Act.]

## CHAPTER IV.

## ENHANCEMENT AND FIXING RATES OF RENT.

*A.—Tenants with Right of Occupancy.*

**32.** No tenant having a right of occupancy in any land shall, in case of dispute as to the rent to be paid in respect of such land, be liable to an enhancement of the rent, except in pursuance of a decree made under this Act on some one of the following grounds (that is to say) :—

*1st ground.*—That the rate of rent paid by him is below the rate of rent usually paid, by the same class of tenants having a right of occupancy, for land of a similar description and with similar advantages, situate in the same village.

*Rule.*—In this case the Court shall enhance his rent to such amount as the plaintiff demands, not exceeding such rate.

*2nd ground.*—That the rate of rent paid by him is more than 12½ per cent. below the rate of rent usually paid, by tenants of the same class not having a right of occupancy, for land of a similar description and with similar advantages, situate in the same village.

*The Oudh Rent Bill.**(Chapter IV.—Enhancement and fixing Rules of Rent.—Sections 33-35A)*

*Rule.*—In this case the Court shall enhance his rent to such amount as the plaintiff demands, not exceeding such rate, less 12½ per cent.\*

*3rd ground.*—That the quantity of land held by him exceeds the quantity for which he has previously paid rent.

*Rule.*—In this case the Court shall decree rent for the land in excess, at rates to be fixed by the first or the second of the rules contained in this section, as the case may be.

Nothing contained in the previous part of this section shall affect the terms of any agreement in writing hereafter entered into between a landlord and tenant.

33. After a decision has been passed in accordance with section 32 no suit shall lie for re-enhancement of such rent until the expiration of five years from the date of such decision, except on the said 3rd ground, or, in the case referred to in section 31, until by re-assessment within the said term of five years the revenue of such land has been increased.

34. On such re-assessment, if the rent of such tenant cannot be enhanced under section 32 by reason of the absence of the grounds therein mentioned, the landlord may institute a suit to enhance the rent to a sum not exceeding double the average amount of the revenue imposed at such re-assessment upon land of a similar description and with similar advantages held by tenants of the same class in the same village.

*B.—Other Tenants.*

35. Every tenant, not being a tenant with a right of occupancy, shall be entitled to retain possession of the holding occupied by him at the time of the passing of this Act at the rent then payable by him for a period of seven years from the date of the last change in his rent or of the last alteration in the area of the holding.

35. (A). Every such tenant hereafter admitted to the occupation of a holding shall be entitled to retain the same for a period of seven years from the date of his admission at a rent agreed upon with the landlord in accordance with the provisions of this Act; and every tenant, not being a tenant with a right of occupancy, in the area of whose holding or in the amount of whose rent any change shall be made by the landlord subsequently to the passing of this Act, shall be deemed to be admitted to the occupation of a holding within the meaning of this section.

*Explanation.*—Holding means a parcel or parcels of land held by a tenant and forming the subject of a



*The Oudh Rent Bill.**( Chapter IV.—Enhancement and fixing Rates of Rent.—Sections 36-36 C.)*

separate engagement. Such engagement may be express or implied.

36. If the landlord desires to enhance the rent of the tenant on the expiration of statutory tenancy limited. years referred to in sections 35 and 35 (A), or at any time thereafter, he shall cause a notice to that effect to be served in the manner prescribed in section 35B. Until such notice is issued, the tenant shall be entitled to hold at the former rent:

Provided—(a) that the enhancement shall in no case exceed one anna in the rupee or six and a quarter per cent. on the annual rent payable when the notice is issued;

(b) that the terms of this section shall not apply to a tenant paying rent in kind.

36. (A). The notice shall be written in Hindi and Urdu; it shall specify the land, the amount of the present rent and the amount of the enhancement, and shall require the tenant, if he refuses to pay the enhancement, to vacate the land by the fifteenth day of May next following, or to institute a suit in the proper Court to contest the notice of enhancement within a month from the date on which it was served.

36 (B). On the application of the landlord to the tahsildar or officer authorized to serve such notices, the notice shall be served by such officer on or before the fifteenth day of February, and the landlord shall pay the cost of service.

The notice shall, if practicable, be served personally on the tenant. But if he cannot be found, service may be made by affixing the notice at his usual place of residence, or, if he does not reside in the district wherein the land is situate, at the village chaupal or other conspicuous place in the village wherein the land is situate.

Grounds on which tenant may contest his liability to enhancement. 36 (C). A tenant may institute a suit to contest his liability to enhancement on any of the following grounds:—

1st—That he holds a lease or agreement or a decree of Court under the terms of which he is not liable to enhancement.

2nd—That he has a right of occupancy in the land.

3rd—That the enhancement claimed is in excess of the rate authorized by law.

4th—That seven years have not elapsed since the date of the last change in the rent or alteration of the area of the holding by the landlord.

*The Oudh Rent Bill.**(Chapter IV.—Enhancement and fixing Rates of Rent.—Sections 36D-36J.)*

5/4 — That the notice has not been served in the manner prescribed in section 36 B.

36 (D). If the objection of the tenant is found by the Court to be invalid, or, if no suit has been instituted to contest the notice within a period of thirty days from the day on which it was served, or the expiration of such period, the tenant shall, if he retains possession of the land after the fifteenth day of May next following the date of service of the notice, be held liable for the enhanced rent.

36 (E). If the tenant accepts the enhanced rent claimed by the notice, or remains in possession of the land under the terms of the preceding section, he shall be entitled to hold the land at such rent for a further period of seven years.

36 (F). If the tenant refuses to accept the enhancement claimed and vacates the holding, he shall be entitled to recover by separate suit from the landlord compensation for any improvements made by him on the holding.

36 (G). Except in the cases mentioned in the next following section, the rent of a tenant admitted to the occupation of any land the tenancy of which has been determined according to the provisions of this Act shall not exceed by more than one anna in the rupee, or six and a quarter per cent., the rent payable by the tenant immediately preceding.

36 (H).—The rent of a tenant admitted to the occupation of any land the tenancy of which has ceased in consequence of the death of a previous tenant, or of the ejectment of a thikaddar or mortgagee from lands of which he has taken cultivating possession during the period of his thika or mortgage, shall be such amount as may be agreed upon between him and the landlord.

36 (I). The heir of a tenant who dies during the currency of the tenancy shall have the right to retain occupation of the land at the rent payable by the deceased for the unexpired portion of the period for which the deceased tenant might have held without liability to enhancement or ejectment, and to receive compensation under the provisions of this Act for improvements, if any, effected on the holding by himself or his predecessor in interest, but shall have no right to a renewal of the tenancy or to compensation for disturbance.

36 (J). Notwithstanding anything contained in the preceding sections, the Local Government shall have power to vary, from time to time, the limit of enhancement of rent.

*The Oudh Rent Bill.**(Chapter V.—Ejectment.—Sections 36K-38A.)*

to time, within periods of not less than seven years, the limits of the enhancement to which tenants, not having rights of occupancy, are liable.

36 (K). Nothing in the preceding sections for enhancement of rent shall bar the right of a landlord to an enhancement of rent on the ground that the productive powers of the land held by the tenant have been increased by an improvement effected by, or at the expense of, the landlord during the currency of the tenancy.

Where an enhancement is claimed on the ground of such an improvement, the Court in determining the amount of such enhancement shall have regard to—

firstly—the increase in the productive powers in the land caused, or likely to be caused, by the improvement;

secondly—to the cost of the improvement;

thirdly—to the cost of the cultivation required for the utilising of the improvement.

## CHAPTER V.

## EJECTMENT.

*Tenants with Right of Occupancy.*

37. No tenant having a right of occupancy, or holding under an unexpired lease, or special agreement, or decree of Court, shall be ejected otherwise than in execution of a decree for ejectment:

[Act XIX, 1868, section 41.]

Provided that, if the tenant have a right of occupancy in the land from which the landlord desires to eject him, the decree shall not be made, unless, at the date of the decree, a decree against such tenant for an arrear of rent in respect of such land has remained unsatisfied for fifteen days or upwards.

*Other Tenants.*

38. A tenant not having a right of occupancy, and not holding under an unexpired lease, or an agreement, or a decree of Court, may be ejected in accordance with the provisions of this Act: first, in execution of a decree for [ ] ejectment under section 43A or by application under section 43; or, second, by notice given by his landlord in the manner described in the next following sections.

[Act XIX, 1868, section 42.]

[Arrears of rent or for]

38(A). A landlord who desires to eject a tenant on the expiration of his tenancy may issue a notice of ejectment on such tenant, but shall

*The Oudh Rent Bill.**(Chapter V.—Ejectment.—Sections 39-40.)*

deposit with the notice in the hands of the officer authorized to serve the notice a sum equal to the rent payable by the tenant for the year immediately preceding as compensation for disturbance.

In the case of a tenant paying rent in kind the amount of compensation to be deposited under this section shall be a sum equal to the average annual value of the produce paid as rent during the preceding three years.

Provided that no such compensation shall be payable to a tenant in respect of so much of his holding as he has sub-let without the consent of the landlord, or in the cases provided for by sections 36 (1), 43 and 43 (d).

[Act XIX, 1868, section 43.]

39. The notice mentioned in section 38 A shall

Notice of ejectment be written in Hindi and of tenant not having in Urdu; it shall specify right of occupancy. the land from which the tenant is to be ejected; and it shall inform him that he must either (a), if he means to dispute the ejectment, institute a suit for that purpose within thirty days from the date of the service of the notice, or (b) vacate the land on or before the fifteenth of May next following.

On the application of the landlord to the tahsildar or officer authorized to serve such notices, the notice shall be served by such officer on or before the fifteenth day of November, and the landlord shall pay the costs of service.

The notice shall, if practicable, be served personally on the tenant. But if he cannot be found, service may be made by affixing the notice at his usual place of residence, or, if he does not reside in the district wherein the land is situate, at the village *chaupal* or other conspicuous place in the village wherein the land is situate.

[Act XIX, 1868, section 37.]

40. A tenant on whom a notice has been

Grounds on which tenanted under section 39 may contest liability to ejectment. may contest his liability to be ejected from the land specified therein on any, of the following grounds:—

1st—That he holds a lease or an agreement, or a decree of Court, under the terms of which he is not liable to such ejectment.

2nd—That he has a right of occupancy in the land.

3rd—If he be a tenant not having a right of occupancy, that notice of ejectment has not been served upon him in manner provided by section 39.

4th—That seven years have not elapsed since the date of the last change of rent or alteration of the area of the holding.

5th—That he is entitled to compensation for disturbance, and that the landlord has not deposited the sum required by this Act.

*The Oudh Rent Bill.**(Chapter V.—Ejectment.—Sections 40A-43.)*

*Explanation.*—A *thikadar* is not entitled to contest a notice of ejectment on any ground other than that he holds a lease under the terms of which he is not liable to ejectment.

40 (A). If the tenant has any claim for compensation for improvements effected by him on the holding, he shall file with his plaint a statement of the claim and of the grounds on which it is based.

40 (B). If the Court finds the objections of the tenant to be invalid, it shall determine the amount of the compensation, if any, due for improvements, and shall declare the ejectment to be conditional on payment of that amount into Court.

41. If the tenant on whom such notice of ejectment has been served fails, within thirty days from the date of the service, to institute a suit to contest his liability to be ejected, his tenancy of the land in respect of which the notice has been served shall be held to cease on the fifteenth of May next following, unless, after the service, the landlord has expressly authorised him to continue to occupy the land.

[Act XIX, 1883, section 44.]

42. If no such suit be brought, or if a suit has been brought and determined adversely to the tenant, and the landlord require the assistance of the Court to eject any person whose tenancy is alleged to have ceased [ ], he may apply for such assistance, and, if the Court is satisfied that notice of ejectment was duly served on such person, and that any compensation for improvements and disturbance, which may be due to the tenant, has been paid into Court or to the proper officer, it shall give such assistance accordingly.

[Ditto, section 45.]

[under the provisions of section 41]

Provided that nothing done by the Court under the previous part of this section shall affect the right of any tenant to institute a suit against his landlord on account of illegal ejectment and to recover compensation for the same.

43. If a landlord desires to eject a tenant, not being a tenant with a right of occupancy, against whom a decree for arrears has been passed and remains unsatisfied, he may, after the first of April of the year in which the arrears accrued, apply to the Deputy Commissioner to eject the tenant. The Deputy Commissioner shall, on receiving the application, cause a notice to be served on the tenant, stating the amount due under the decree and informing him that, if he does not pay that amount into Court within fifteen days from the receipt of the notice, he will be ejected from his holding.

[Act XIX, 1881, section 35.]

If the amount be not so paid, the Deputy



*The Oudh Rent Bill.**(Chapter V.—Ejectment.—Sections 43A-46 A.)*

[Act VIII, 1885, section 25.]

Commissioner shall, unless good cause be shown to the contrary, eject the tenant.

43 (A). A decree for ejectment may be passed against a tenant on the ground—

(a) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of his tenancy; or,

(b) where the rent is payable in kind, that his cultivation has diminished to a point which by the custom of the locality involves the forfeiture of the holding.

The tenant shall continue liable for the rent of the land until the decree is executed.

[except a sub-lessor]

[Act XIX, 1888, section 38.]

[unless, while his rent is in arrear, he has failed to cultivate the land in his possession in accordance with the terms on which he holds it]

[Act XIX, 1888, section 39.]

*General.*

44. No tenant [ ] shall in any case, whether in execution of a decree or otherwise, be ejected from the land in his occupancy, except between the first day of April and the fifteenth day of June in any year after the passing of this Act [ ].

45. A *thikadār* liable to be ejected under the provisions of this Act may be ejected at any time during his tenancy.

46. Any tenant ejected in accordance with the provisions of this Act shall be entitled to receive from the landlord the value of any growing crops or other ungathered products of the earth belonging to such tenant, and being on the land at the time of his ejectment:

Provided that, if the land shall have been sown or planted by the tenant after the service on him of the notice mentioned in section 39, he shall not be so entitled, unless, after such service, the landlord has expressly authorised him to continue to occupy the land.

*Sir Lands.*

46 (A). The rights conferred upon tenants by sections 24, 25, 35(A), 36, 36(E), 36(F), 36(G), 36(I) and 38(A) shall not accrue to cultivators of any of the following lands:—

(a) Land which for the seven years immediately preceding the passing of this Act has been continuously dealt with as *sir* in the distribution of proprietary profits and charges. This condition shall be presumed, until the contrary is proved, where land was recorded as *sir* at settlement and has been continuously so recorded since:

(b) Land which for the seven years immediately preceding the passing of this Act has been continuously cultivated

*The Oudh Rent Bill.**(Chapter VI.—Distress for Arrears of Rent.—Sections 46 B-50.)*

by the proprietor himself or by his servants or by hired labour.

46 (B). A person holding land as a *thikadar* or mortgagee shall not, while so holding, acquire any of the rights enumerated in the preceding section in any of the land comprised in his *thika* or mortgage.

*Explanation.*—A person having such rights in land does not lose them by subsequently taking a *thika* or mortgage in which his holding is comprised.

## CHAPTER VI.

## DISTRESS FOR ARREARS OF RENT.

47. When an arrear of rent is due from any tenant, the landlord may recover of arrears of rent by distress. *Recovery of arrears of rent by distress.* distrain the produce of the land in respect of which the arrear is due, subject to the rules contained in the following sections:

Provided that, when a tenant has given security for the payment of his rent, the produce of the land in respect of which such rent is payable shall not be liable to distress so long as the security is in force. *Proviso as to tenants who have given security for payment of rent.*

48. Distress shall not be made for any arrear which has been due for a longer period than one year; nor for the recovery of any sum in excess of the rent payable in the last preceding year for the land in respect of which the arrear is due, unless the tenant has agreed in writing to pay such excess, or unless he has been declared to be liable for the same by a decree of Court. *No distress in certain cases.*

49. The power of distress vested by section 47 in landlords may be exercised by managers under the Court of Wards, managing agents and *Power of distress by whom exercisable.* *tahsildars* of estates held under *khām* management, and other persons lawfully entrusted with the charge of land, and also by the agents employed by landlords or any such persons as aforesaid in the collection of rent, if expressly authorised by power-of-attorney to distrain: *exercised by managers under the Court of Wards, managing agents and tahsildars of estates held under khām management, and other persons lawfully entrusted with the charge of land, and also by the agents employed by landlords or any such persons as aforesaid in the collection of rent, if expressly authorised by power-of-attorney to distrain:*

Provided that, if any such agent, purporting to act in the exercise of the said power, commits an act which, under the provisions of this chapter, is illegal, the person employing such agent shall be liable, as well as the agent, to be sued for compensation for any injury caused by such act. *Liability of principal to act in the exercise of the said power, commits an act which, under the provisions of this chapter, is illegal, the person employing such agent shall be liable, as well as the agent, to be sued for compensation for any injury caused by such act.*

50. Any person empowered to distrain property under section 47 or section 49 may employ a servant or other person to make the distress; but in every such case he shall give to such servant or person a written authority for the same, and the distress shall be made in the name and on the responsibility of the person giving such authority. *Distress by servants.*

*The Oudh Rent Bill.**(Chapter VI.—Distress for Arrears of Rent.—Sections 51-54.)*

51. Standing crops and other ungathered pro-  
 Crops liable to dis- ducts of the earth, and crops  
 tress. or other products when  
 reaped or gathered and deposited in any threshing-  
 floor or place for treading out grain or the like,  
 whether in the field or within a homestead, may  
 be distrained by persons invested with powers of  
 distress under this Act.

But no such crops or products, other than the  
 produce of the land in respect of which an arrear  
 of rent is due, or of land held under the same  
 agreement as the land in respect of which the  
 arrear is due, and no grain or other produce  
 after it has been stored by the cultivator, and no  
 other property whatsoever, shall be liable to dis-  
 tress under this Act.

52. Before or at the time when any distress is  
 Demand of arrear be made under this Act, the  
 fore or at time of dis- distrainer shall cause the  
 tress. defaulter to be served with  
 a written demand for the amount of the arrear,  
 together with an account exhibiting the grounds  
 on which the demand is made.

The demand and account shall, if practicable,  
 be served personally on the defaulter, but if he  
 cannot be found, they shall be affixed at his  
 usual place of residence, and shall thereupon be  
 deemed to be duly served upon him.

53. Unless the amount of the demand is  
 Value of distress. immediately paid or tender-  
 ed, the distrainer may dis-  
 train property as aforesaid of value as nearly  
 as may be equal to the amount of the arrear  
 Service of list of pro- with the costs of the dis-  
 perty to be distrained. tress; and shall prepare a  
 list or description of the said property, and  
 deliver a copy of the same to the owner, or if he  
 be absent, affix it at his usual place of residence.

54. Standing crops and other ungathered pro-  
 Reaping and storing ducts of the earth may,  
 standing crops when notwithstanding the dis-  
 tress, be reaped or gathered  
 by the tenant, and may be stored in such granar-  
 ies or other places as are commonly used by him  
 for the purpose.

If the tenant neglect to do so, the distrainer  
 may cause the said crops or products to be reaped  
 or gathered, and in such case shall store the same  
 either in such granaries or other places as afore-  
 said, or in some other convenient place in the  
 neighbourhood.

In either case the distrained property shall be  
 placed in the charge of some proper person ap-  
 pointed by the distrainer for the purpose.

If the crops or products do not, from their  
 nature, admit of being stored, the distress shall be  
 made (if at all) at least twenty days before the  
 time when the crops or products or any part  
 thereof would ordinarily be fit for cutting or  
 gathering.

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**55.** If a distrainer is opposed or apprehends resistance, and desires to obtain the assistance of a public officer, he may apply to the Court, and the Court may, if it think necessary, depute an officer to assist the distrainer in making the distress.

**56.** If at any time after property has been distrained as aforesaid, and before the sale thereof as hereinafter provided, the owner tender payment of the arrear demanded and of the costs of the distress, the distrainer shall receive the same and give a receipt therefor, and shall forthwith withdraw the distress.

**57.** Within five days from the time of storing any distrained crops or products, or, if such crops or products do not from their nature admit of being stored, within five days from the time of making the distress, the distrainer shall apply for sale of the same to the proper officer authorized to sell property in satisfaction of decrees of the Court within whose jurisdiction the distrained property is situate.

**58.** The application shall be in writing; it shall contain a list or description of the property distrained, and it shall state the name of the defaulter, his place of residence, the amount due and the place in which the distrained property is deposited.

Together with the application, the distrainer shall deliver to the proper officer the sum payable for the service of a notice upon the defaulter as hereinafter provided.

**59.** Immediately on receipt of the application, the proper officer shall send a copy of it to the Court, and shall serve a notice in the form contained in Schedule C hereto annexed, or to the like effect, on the person whose property has been distrained, requiring him either to pay the amount demanded, or within fifteen days from the receipt of the notice to institute a suit to contest the demand.

The officer shall at the same time send to the Court, for the purpose of being put up at the court-house, a proclamation fixing a day for the sale of the distrained property, not less than twenty days from the date of the proclamation; and shall deliver a copy of the proclamation to the peon charged with the service of the notice, to be put up by him in the place where the distrained property is deposited.

The proclamation shall contain a description of the property, and shall specify the demand for which it is sold, and the place where the sale is to be held.

*The Oudh Rent Bill.**(Chapter VI.—Distress for Arrears of Rent.—Sections 60-64.)*

60. If a suit is instituted in pursuance of the aforesaid notice, the Court shall send to the proper officer, or, if so requested by the owner of the distrained property, shall deliver to him, a certificate of the institution of the suit.

On such certificate being received by, or presented to, the proper officer, he shall suspend proceedings in regard to the sale:

\*Provided that, if in his opinion the property distrained is such that delay will cause damage thereto, he may direct its immediate sale.

61. Any person whose property has been distrained as aforesaid may institute a suit to contest the distrainer's demand at any time before the expiration of the fifteen days mentioned in section 59.

When such suit is instituted, the Court shall proceed in the manner prescribed in section 60.

If application for the sale of the property is afterwards made to the proper officer, he shall send a copy of the application to the Court, and suspend further proceedings pending the decision of the case.

62. The person whose property has been distrained may, at the time of instituting any such suit as aforesaid, or at any subsequent period, execute a bond with one or more surety or sureties, for an amount not less than double the value of the property so distrained, binding himself to pay whatever sum may be adjudged to be due from him, with costs of suit.

When such bond is executed, the Court shall give to the owner of the property a certificate to that effect, or, if he so requests, shall serve the distrainer with notice of the same.

Upon such certificate being presented to the distrainer by the owner of the property, or served on him by order of the Court, the property shall be released from distress.

63. On the expiration of the period fixed in the proclamation of sale, if the institution of a suit to contest the demand of the distrainer has not been certified to the proper officer in the manner hereinbefore provided, he shall, unless the said demand, with such costs of the distress as are allowed by him, be discharged in full, proceed, with the sanction of the Court, to sell the property, or such part thereof as may be necessary.

64. The sale shall be held at the place where the distrained property is deposited, or at the nearest ganj, bazar or other place of public resort, if the

*The Oudh Rent Bill.**(Chapter VI.—Distress for Arrears of Rent.—Sections 65-69.)*

proper officer thinks that it is likely to sell there to better advantage.

The property shall be sold by public auction in one or more lots as the officer holding the sale thinks advisable; and if the demand, with the costs of distress and sale, be satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn with respect to the remainder.

65. If, on the property being put up for sale, a price which the officer holding the sale shall think fair be not offered, and if the owner of the property or his recognized agent apply to have the sale postponed until the next day, or (if a market be held at the place of sale) until the next market-day, the sale shall be postponed until such day, and shall be then completed at whatever price may be offered.

66. The price of every lot shall be paid in ready money at the time of sale, or as soon thereafter as the officer holding the sale thinks fit; and in default of such payment the property shall be put up again and re-sold.

When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate stating the property purchased by him and the price paid therefor.

67. The officer holding the sale shall deduct from the proceeds one anna for every rupee and fraction of a rupee on account of the expenses attending the sale.

He shall then pay to the distrainer the expenses incurred by him on account of the distress and of the issue of the notice and proclamation of sale prescribed in section 59, to such amount as, after examination of the statement of expenses furnished by the distrainer, the officer thinks proper to allow.

The remainder shall be applied to the discharge of the arrear for which the distress was made, and the surplus (if any) shall be delivered to the person whose property has been sold.

68. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are forbidden to purchase, either directly or indirectly, property sold by such officers.

69. The officer mentioned in section 57 shall bring to the notice of the Court any illegal act which shall come to his knowledge as having been committed by any person in making a distress under this Act.

If in any case, on proceeding to hold a sale under this Act, such officer finds that the owner has not received due notice of the distress and



*The Oudh Rent Bill.**(Chapter VI.—Distress for Arrears of Rent.—Sections 70-72.)*

intended sale, he shall postpone the sale and report the case to the Court, and the Court shall direct the issue of another notice and proclamation of sale under section 59, or make such other order as it thinks proper.

70. When such officer has gone to any place for the purpose of holding a sale, and no sale takes place, either for the reason stated in section 60, or because the distrainer's demand has been previously satisfied, the said charge on account of expenses attending the sale shall be leviable by the officer, and shall be calculated on the value of the distrained property, as estimated by him, unless the distrainer's demand has been satisfied before the day fixed for the sale and notice of such satisfaction has been given by him to the officer.

If the distrainer's demand be not satisfied until the day fixed for the sale, the charge shall be paid by the owner of the property, and may be recovered by sale of such portion thereof as may be necessary.

In every other case the charge shall be paid by the distrainer, and may be recovered under the warrant of the Court by attachment and sale of his property :

Provided that in no case shall an amount exceeding ten rupees be recoverable under this section.

71. When a suit has been instituted to contest a distrainer's demand, and the property has not been released on security, if the demand or any portion of it shall be adjudged to be due, the Court shall issue an order to the proper officer authorizing the sale of the property.

On the application of the distrainer (which shall be made within five days from the receipt of such order by such officer), such officer shall publish a second proclamation in the manner prescribed in section 59, fixing another day for the sale of the distrained property, not less than five nor more than ten days from the date of the proclamation ; and, unless the amount adjudged to be due with cost of distress be paid immediately, shall proceed to sell the property in the manner hereinbefore provided.

72. In all suits instituted to contest a distrainer's demand the defendant must prove the arrear in the same manner as if he had himself brought a suit for the amount under the foregoing provisions of this Act.

If the demand or any part thereof is found to be due, the Court shall make a decree for the amount in favour of the distrainer.

Such amount may be recovered by sale of the distrained property as provided in section 71,

*The Oudh Rent Bill.**(Chapter VI.—Distress for Arrears of Rent.—Sections 73-77.)*

and if the distress has not been withdrawn, and if any balance remain due after such sale, by execution of the decree against the person and any other property of the defaulter, or, if the distrained property have been released on security, by execution of the decree against the person and property of the defaulter, and, if his surety has been made a party to the suit, against the person and property of such surety.

**73.** If the distress is adjudged to be vexatious or groundless, the Court, besides directing the release of the distrained property, may award such compensation to the plaintiff as it thinks fit, not exceeding twice the value of the property distrained.

**74.** If any person claims, as his own, property which has been distrained for arrears of rent alleged to be due from any other person, the claimant may institute a suit against the distrainer and such other person to try the right to the property, in the same manner, and under the same rules as to the time of instituting the suit and as to the consequent postponement of sale, as a person whose property has been distrained for an arrear of rent alleged to be due from him may institute a suit to contest the demand.

**75.** When any such suit is instituted, the property may be released upon giving security for its value being given to the satisfaction of the Court.

If the claim is dismissed, the Court shall make an order in favour of the distrainer for the sale of the property, or the recovery of its value, as the case may be.

If the claim is upheld, the Court shall order the release of the distrained property, and may award such compensation as it thinks fit, not exceeding twice the value of the property distrained.

**76.** No claim to any produce of land liable to distress under this Act, and found at the time of the distress in the possession of a defaulting tenant, whether such claim be in respect of a previous sale, mortgage or otherwise, shall bar the landlord's prior claim, nor shall any attachment in execution of a decree of any Civil Court prevail against such claim.

**77.** Whenever property has been distrained for an arrear of rent, and a suit has been instituted to contest the demand, and the right to distrain for such

*The Oudh Rent Bill.**(Chapter VI.—Distress for Arrears of Rent.—Sections 78-80.)*

arrears is claimed by or on behalf of any person other than the distrainer, on the ground of such other person being actually and in good faith in the receipt and enjoyment of the rent of the land, such other person shall be made by a party to the suit, and the question of the actual receipt and enjoyment of the rent by him before and up to the commencement of the suit shall be inquired into, and the suit shall be decided according to the result of such inquiry:

Provided that the decision of the Court shall not affect the right of any person having a title to the rent of land to establish such title in a Court of competent jurisdiction, by suit instituted within one year from the date of the decision.

78. Any person whose property has been distrained for the recovery of a demand not justly due or of a demand due or alleged to be due from some other person, and who is prevented by any sufficient cause from bringing a suit to contest the demand or try the right to the property, as the case may be, within the period allowed by sections 59 and 74, and whose property is in consequence brought to sale, may institute a suit to recover compensation for any injury which he has sustained from the distress or sale.

79. If any person empowered to distrain property, or employed for the purpose under a written authority by a person so empowered, distrains or sells any property for the recovery of an arrear of rent alleged to be due, otherwise than according to the provisions of this Act,

or if any distrained property is lost, damaged or destroyed, by reason of the distrainer not having taken proper precaution for the due keeping and preservation thereof,

or if the distress is not immediately withdrawn when any provision of this Act requires such withdrawal,

the owner of the property may institute a suit to recover compensation for any injury which he has thereby sustained.

80. If any person not empowered by this Act to distrain or sell, nor duly authorized for that purpose by a person so empowered, purports to distrain or sell any property under this Act, the owner of such property may institute a suit to recover compensation from the person so distraining or selling for any injury which the plaintiff has sustained from the distress or sale.

Such suit shall not affect the defendant's liability to be prosecuted under any law for the time being in force.

*The Oudh Rent Bill.**(Chapter VII.—Jurisdiction of the Courts.—Sections 81-89.)*

**81.** If any person resists a distress of property duly made under this Act, or forcibly or clandestinely removes any distrained property, the Court, upon complaint being made within ten days from the date of such resistance or removal, shall cause the person accused to be arrested and brought before the Court with all convenient speed, and the Court shall proceed forthwith to try the case.

If the case cannot be at once heard and determined, the Court may, if it think fit, require the party arrested to give security for his person, whenever the same may be required, and, in default of such security, may commit him to the civil jail until the case is tried.

**82.** If such resistance or removal of property be proved, the Court may order the offender to pay a fine not exceeding one hundred rupees, together with all costs and expenses incurred in the case or in making the distress, and, in default of payment, may order him to be imprisoned in the civil jail until payment is made: Provided that no such imprisonment shall continue for more than six months.

## CHAPTER VII.

## JURISDICTION OF THE COURTS.

*Suits cognizable.*

**83.** No Courts other than Courts of Revenue Suits cognizable in Oudh shall take cognizance of the following descriptions of suits, and such suits shall be heard and determined in the said Courts of Revenue in the manner provided in this Act, and not otherwise:—

*A.—Suits by a Landlord.*

(1).—For the delivery by a tenant of the counterpart of a *patta* under section 10;

(2).—For arrears of rent;

(3).—For the enhancement of the rent of a tenant [ . . . ];

(4).—For the ejectment of a tenant [ . . . ];

(5).—Suits by landlords against patwáris or agents employed by landlords in the management of land or the collection of revenue or rent, or against the sureties of such patwáris or agents for money received or accounts kept by such patwáris or agents in the course of such employment, or for papers in their possession, or for the rendering and settlement of accounts.

*B.—Suits by an Under-Proprietor or a Tenant.*

(6).—For establishing a right of occupancy;

[having a right of occupancy]

[or for cancelling any lease on account of the non-payment of arrears of rent or on account of a breach of the conditions of such lease]

*The Oudh Rent Bill.**(Chapter VII.—Jurisdiction of the Courts.—Section 83.)*

(7.)—For the delivery by a landlord of a *patta*;

(8.)—For contesting a notice of ejectment;

(9.)—For compensation—

on account of illegal enforcement of payment of rent, or of any sum in excess of rent, due, or on account of the refusal of receipts or acknowledgments for rent paid or tendered,

or on account of illegal ejectment,

or on account of the value of standing crops under section 48,

or on account of loss arising for the making of improvements under section 26;

(10.)—For the recovery of the occupancy of any land of which an under-proprietor or tenant has been dispossessed or from which he has been illegally ejected by the landlord;

(11.)—For contesting the exercise of the power of distraint conferred on landlords and others by this Act, or any acts purporting to be done in exercise of the said power, or for compensation for illegal distraint;

(12.)—For abatement for rent in accordance with the provisions of section 19;

(13.)—For the recovery of compensation for improvements in accordance with the provisions of section 22.

*C.—Suits regarding the Division or Appraisal of Produce.*

(14.)—Suits under section 81, regarding the division, estimate or appraisal of the produce of land.

*D.—Suits by and against Lambardars, Co-sharers and Muafidars.*

(15.)—Suits by a sharer against a lambardar or co-sharer for share of the profits of an estate or any part thereof, or for the rendering and settlement of accounts in respect of such profits;

(16.)—Suits by a lambardar or pattidar who is entitled to collect the rents of the *patti*, for arrears of revenue or rent payable through him by the co-sharers whom he represents, and by a lambardar for village-expenses and other dues for which the co-sharers may be responsible to him, or against a joint lambardar for compensation for revenue or rent paid by such lambardar on account of such joint lambardar;

(17.)—Suits by co-sharers against lambardars, or by proprietors or lessees against muafidars or assignees of revenue, for compensation on account of exaction in excess of revenue or rent, or on account of the refusal of receipts or acknowledgments for revenue or rent paid or tendered;

(18.)—Suits by muafidars or assignees of revenue for arrears of revenue.

*The Oudh Rent Bill.**(Chapter VII.—Jurisdiction of the Courts.—Sections 84-91.)**Grades of Courts.*

Grades of Courts for the purposes of this Act. 84. For the purposes of this Act, the Courts of Revenue shall consist of six grades of Courts, namely,—

- (1.)—The Court of the Assistant Collector of the second class;
- (2.)—The Court of the Assistant Collector of the first class;
- (3.)—The Court of the Deputy Collector;
- (4.)—The Court of the Collector;
- (5.)—The Court of the Commissioner;
- (6.)—The Court of the Judicial Commissioner.

Chief Commissioner may declare grade of Tahsildar or Assistant Commissioner. 85. The Chief Commissioner of Oudh shall have power to declare to which of the first three grades any Assistant Commissioner shall belong, and to invest any Tahsildar with the powers of any of the same grades.

Deputy Commissioner to have Collector's powers. 86. The Deputy Commissioner shall exercise the powers of a Collector under this Act.

Settlement-officers may be invested with powers of Collector, &c., under this Act. 87. The Chief Commissioner of Oudh may invest any officer employed in making or revising settlements of revenue with all or any of the powers of a Collector, or Deputy Collector, or Assistant Collector, under this Act.

Jurisdiction of Assistant Collector of the second class. 88. The Court of the Assistant Collector of the second class shall have power to try and determine suits of the descriptions mentioned in clauses (1), (2), (7), (12), (13), (16), (17) and (18) of section 83, of which the subject-matter does not exceed one hundred rupees in value or amount.

Jurisdiction of Assistant Collector of the first class. 89. The Court of the Assistant Collector of the first class shall have power to try and determine suits of the descriptions referred to in the last preceding section, of which the subject-matter does not exceed five hundred rupees in value or amount.

Jurisdiction of Deputy Collector. 90. The Court of the Deputy Collector shall have power to try and determine suits of every description of which the subject-matter does not exceed five thousand rupees in value or amount.

Jurisdiction of Collector. 91. The Court of the Collector shall have power to try and determine suits of every description and of any amount, and to hear appeals from the decisions in suits, and (where an appeal is allowed by the Code of Civil Procedure as applied by this Act) from the



*The Oudh Rent Bill.**(Chapter VII.—Jurisdiction of the Courts.—Sections 92-95.)*

orders of the Assistant Collectors, and, in suits under clauses (2), (5), (9), (11), (14), (15), (16), (17) and (18) of section 83, from such decisions and orders of the Deputy Collectors.

Whenever the state of the public business requires it, the Chief Commissioner may invest any Deputy Collector with the powers of a Collector for the trial and determination of suits and appeals under this Act, other than appeals from the decisions of such Deputy Collector, and with the powers of a Deputy Commissioner to hear applications under sections 24 and 43, and may invest any Collector with all or any of the powers of a Commissioner under this Act.

92. The Court of the Commissioner shall have power to hear and determine appeals from decisions in suits, and (where an appeal is allowed by the Code of Civil Procedure) from the orders of the Collectors and Deputy Collectors, except as otherwise provided in sections 91 and 95 [and 102].

93. The Court of the Judicial Commissioner shall have power to hear and determine appeals from the decisions in suits, and (where an appeal is allowed by the Code of Civil Procedure) from the orders of the Commissioners, and also second appeals, as provided in the said Code, from the decisions passed in first appeal by the Collectors and by the Commissioners.

*Appeals.*

94. The memorandum of appeal, prepared in the form and containing the particulars mentioned in the Code of Civil Procedure, shall be presented to the Court empowered to hear the appeal within the period hereinafter specified, unless the appellant shall show sufficient cause, to the satisfaction of such Court, for not having presented the memorandum within such period; that is to say, thirty days if the appeal lie to the Collector, six weeks if the appeal lie to the Commissioner, and ninety days if the appeal lie to the Judicial Commissioner.

The period shall be reckoned from and exclusive of the day on which the decision or order appealed against was passed, and also exclusive of such time as may be requisite for obtaining a copy of the decree or order from which the appeal is made.

Second appeals shall be presented in the Court of the Judicial Commissioner within the period hereinbefore fixed for the presentation of first appeals.

95. In suits under clauses (2), (5), (9), (11), (14), (15), (16), (17) and (18) of section 83, and in appeals from decisions in such suits tried and decided by a Commissioner or Col-  
No appeals, except in certain cases, from Collector's decrees for money below one hundred rupees.

*The Oudh Rent Bill.**(Chapter VII.—Jurisdiction of the Courts.—Sections 96-99.)*

lector, if the amount sued for does not exceed one hundred rupees, the judgment shall be final, except as hereinafter provided, unless in any such suit a question of right to enhance or otherwise vary the rent of a tenant, or any question relating to a title to land or to some interest in land, as between parties having conflicting claims thereto, has been determined by the judgment.

In such case the judgment shall be open to appeal in the manner provided in this Act.

*Distribution of Business.*

96. The Deputy Commissioner may direct the Deputy Commissioner business in the Courts subordinate to him, whether or not they hold their sittings in the same place, to be distributed among such Courts in such way as he shall think fit.

*Transfer of Suits and Appeals.*

97. The Commissioner or the Deputy Commissioner may withdraw any suit instituted in any Court subordinate to him, and try such suit himself, or refer it for trial to any other such Court competent to try the same.

The Commissioner may also withdraw any appeal instituted in the Court of any Collector subordinate to him, and try the appeal himself, or refer it for trial to the Court of any other Collector in his Division.

98. The Judicial Commissioner may order that any suit or appeal which shall be instituted in or presented to any Court subordinate to him shall be transferred to any other such Court competent to try or hear the subject-matter of the same.

*Miscellaneous.*

99. In the performance of their duties under this Act, the Collectors shall be subject to the direction and control of the Commissioners and of the Chief Commissioner; and the Deputy Collectors and Assistant Collectors shall be subject to the direction and control of the Deputy Commissioners to whom they are respectively subordinate:

Provided that nothing in this section shall empower the Chief Commissioner or any Commissioner or Deputy Commissioner to interfere in any way not authorized by this Act with any decision or order in a suit.

*The Oudh Rent Bill.**(Chapter VIII.—Limitation of Suits.—Sections 100-106.)*

**100.** All suits which, under the provisions of this Act, may be brought by or against landlords, may be brought by or against managing agents or tahsildars of estates held under khām management, whether such estates are the property of Government or not.

*Suits by or against managing agents or tahsildars of khām estates.*

**101.** No sharer in a joint estate, under-proprietary or other tenure, in which a division of land has not been made among the sharers, shall exercise any of the powers conferred by this Act in regard to the recovery of arrears of rent, enhancement of rent, ejectment of tenants, or distress, otherwise than through a manager authorized to collect the rents on behalf of all the sharers.

*Sharer to exercise certain powers only through manager or lambardar.*

In pattidari estates or tenures such powers shall be exercised only through a lambardar, or through the pattidar who is entitled to collect the rents of the patti.

**102.** Any person in possession of land occupied without consent of the landlord, shall be liable for the rent of such land at the rate payable in the previous year, or, if no rent was payable in the previous year, at such rate as the Court may determine to be fair and equitable, and he shall not in respect of such land have any of the statutory privileges conferred by this Act.

*Rents payable on land occupied without consent of the landlord.*

**103.** The Courts may sit for the hearing and determining suits and appeals, and for disposing of other business under this Act, in any place within the local limits of their respective jurisdictions:

*Courts may sit any where within limits of their jurisdiction.*

Provided that every hearing and decision shall be in open Court, and that the parties to the suit, or their authorized agents, shall have had due notice to attend at such place.

## CHAPTER VIII.

## LIMITATION OF SUITS.

**104.** Except as herein otherwise provided, and subject to the provisions as to legal disability contained in any law for the limitation of suits for the time being in force in Oudh, all suits under this Act shall be instituted within one year from the date of the accruing of the cause of action.

*General limitation.*

**105.** Suits for the delivery of pattas or the counterparts of pattas may be instituted at any time during the tenancy.

*Suits for delivery of leases or counterparts.*

**106.** Suits for the recovery of arrears of rent or revenue or of a share of profits shall, except in the case mentioned in

*Suits for arrears of rent or revenue or share of profits.*

*The Oudh Rent Bill.**(Chapter IX.—Procedure.—Sections 107-110.)*

section 16, be instituted within three years from the date on which the arrear or share of profit claimed shall have become due.

**107.** Suits for the recovery of money in the hands of an agent, or for the settlement of accounts or delivery of papers by an agent, may be brought at any time during the continuance of the agency or within one year after its determination, or, in the case of claims legally cognizable at the date of the passing of this Act, within one year after such date.

**108.** Suits regarding distress under section 71, 78, 79 or 80, and suits regarding the division, estimate or appraisement of the produce of land, shall be commenced within three months from the date of the accruing of the cause of action.

## CHAPTER IX.

## PROCEDURE.

**XIV of 1882. 109.** The provisions of the Code of Civil Procedure as in force in Oudh shall, so far as they are not inconsistent with the provisions herein contained, apply to all suits, appeals and proceedings under this Act.

**110.** In addition to the particulars required by section 50 of the said Code to be specified in the plaint, the plaint shall contain the following particulars:—

**1st.**—The name of the village or estate, and of the parganá in which the land to which the suit relates is situate;

**2nd.**—If the suit be for recovery of an arrear of rent, or for the enhancement or abatement of rent, or for the ejectment of a tenant, or for contesting a notice of enhancement of rent, or for contesting a notice for the ejectment of a tenant or for the recovery of the occupancy or possession of any land, the plaint shall specify the extent, situation and designation of the land to which the suit relates and, where fields have been marked in a Government survey, the number (if it be possible to give it) of each field;

**3rd.**—If the suit be for recovery of an arrear of rent or revenue, the plaint shall specify the yearly rent or revenue of the land, the amount (if any) received on account of the year or years for which the claim is made, the amount in arrear and the time in respect of which it is alleged to be due;

**4th.**—If the suit be for the delivery of a *patta* or the counterpart of a *patta*, the plaint shall specify all the particulars mentioned in section 7.

*The Oudh Rent Bill.**(Chapter IX.—Procedure.—Sections 111-117.)*

111. When in any suit between a landlord and an under-proprietor or tenant the right to receive the rent of the land is claimed by a third person, on the ground, that he, or a person through whom he claims, has actually and in good faith received and enjoyed such rent up to the time of the commencement of the suit, such third person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by him or the person through whom he claims shall be inquired into, and the suit shall be decided according to the result of such inquiry:

Provided always that the decision of the Court shall not affect the right of any party having a legal right to the rent of such land to establish his title thereto in a Court of competent jurisdiction.

112. In all suits under clauses (1), (2), (7), (10) and (11) of section 83 of this Act, the summons to the defendant shall be for the final disposal of the suit.

113. In a suit to recover an arrear of rent, no set-off shall be allowed against the claim, except such amount as may be due to the defendant on an unexecuted decree under this Act against the plaintiff.

114. In any suit under this Act involving a claim to money, the defendant may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the plaintiff's claim, together with the costs incurred by the plaintiff up to the time of such deposit.

Notice of the deposit shall be given to the plaintiff, and the amount deposited shall be paid to him on his application.

No interest shall be allowed to a plaintiff on any sum paid by the defendant into Court from the date of such payment, whether such sum be in full of the plaintiff's claim or fall short thereof.

115. In any case in which the defendant deposits less than the amount claimed by the plaintiff, nothing in section 114 shall bar the plaintiff from proceeding in the suit for the recovery of the balance.

116. If a tenant not having a right of occupancy institute a suit against a landlord for the delivery of a lease, or a landlord institute a suit against a tenant not having a right of occupancy for the delivery of the counterpart of a lease, and the parties do not agree in respect of the particulars which such lease or counterpart is to contain, the Court shall dismiss the suit, unless evidence in writing is produced which shall satisfy the Court that an agreement has been entered into between the parties in accordance with which such lease or counterpart ought to be delivered.]

117. The local inquiry described in section 892 of the Code of Civil XIV of 1880 Procedure may also, if he think fit, be made by the Collector in person or other officer presiding in the Court, and the provisions of the said Code regarding local inquiries shall apply to such inquiries made by such Collector or other officer. In such cases the Collector or other officer as aforesaid, after completing the inquiry, shall

*The Oudh Rent Bill.**(Chapter IX.—Procedure.—Sections 118-123.)*

record on the proceedings such observations as he thinks fit, and the observations so recorded shall be received as evidence in the suit.

*As to Decrees.*

118. No process of execution shall be issued on a decree under this Act when the application for the issue of such process is made after the lapse of three years from the date of such decree, unless the decree be for a sum exceeding five hundred rupees, in which case the period within which execution may be had shall be regulated by the law in force as to the period allowed for the execution of decrees of the Civil Courts.

XIV of 1882.

119. When a decree for money is made in any immediate execution suit under this Act, the Court may, on the oral application of the party in whose favour the decree is passed, direct immediate execution thereof in the manner described in section 256 of the Code of Civil Procedure.

120. When a decree in favour of the plaintiff is made in a suit for an enhancement of rent, the Court shall declare the date from which such enhancement shall take effect.

121. If the decree be for the delivery of papers or accounts, it may be enforced by the imprisonment in the civil jail of the party against whom it is made or by the attachment of his property, or by both imprisonment and attachment.

The imprisonment and attachment may be continued until he complies with the terms of the decree :

Provided that no person shall be imprisoned under this section for a longer period than six months.

122. A decree for the delivery of a *patta* or of the counterpart of a *patta* shall specify all the particulars mentioned in section 7, and such other particulars in accordance with the provisions of this Act as to the Court seem fit.

123. If the decree be for the delivery of a *patta* or the counterpart of a *patta*, and the party ordered to deliver such *patta* or counterpart neglects or refuses so to do, the Court may grant a *patta* or counterpart in conformity with the terms of the decree, and such *patta* or counterpart shall have the same effect as if delivered by the party against whom the decree was passed.

*The Oudh Rent Bill.**(Chapter I.—General.—Sections 124-129.)*

124. If the decree be for money, no process in execution shall issue against moveable property of the judgment-debtor, other than attachment of such property, unless satisfaction of the decree cannot be obtained against his moveable property.

125. If the decree be for an arrear of rent due in respect of an under-proprietary right, the interest of the judgment-debtor in such right may, subject to the provisions of this Act, be sold in execution of the decree.

[Provided that no such sale shall be allowed unless it appear to the Deputy Commissioner that satisfaction of the decree cannot be made in the manner referred to in sections 243 and 244 of the Code of Civil Procedure.]

If it appear to the Court that such satisfaction can be made, the Court may exercise the powers given to it by the said section 243, although no application has been made by the judgment-debtor.

The Deputy Commissioner may be appointed manager of the property under the same section. When he has been so appointed, he may exercise, for the satisfaction of the decree against the judgment-debtor, all the powers which, under any law in force in Oudh, he might have exercised for the recovery of an arrear of revenue due by such judgment-debtor to the Government.]

126. No beneficial lease or other incumbrance hereafter created on his estate by any under-proprietor shall be valid, in the event of the sale of his rights and interests in execution of a decree for arrears of rent, unless such incumbrance has been registered, under any rules or law for the time being in force in Oudh, within four months after the creation thereof, and not less than thirty days before the date of attachment of such rights and interests.

127. When an under-proprietor creates any such incumbrance and fails to pay to the proprietor all or any part of the rent subsequently accruing in respect of the land subject to the incumbrance, the incumbrancer shall be liable to pay to the proprietor the whole or such part as aforesaid of the said rent, unless the proprietor has agreed in writing to waive any claim which he might otherwise have made on the incumbrancer under this section.

128. When land is sold in execution of a decree under this Act, and the land or any lot thereof has been knocked down to a stranger, any co-sharer, other than the judgment-debtor, may, before sunset on the day of sale, claim to take the land or lot, as the case may be, at the sum at which it was so knocked down.

If the land be an under-proprietary tenure, a like claim may also be made by the proprietor.

Any claim made under this section shall be allowed: Provided that, if a claim to the same land or lot be made by a proprietor as well as by a co-sharer, the claim of the co-sharer shall be preferred: Provided also that no claim shall be allowed unless the claimant fulfil all the conditions of the sale binding on a purchaser.

## CHAPTER X.

## GENERAL.

129. The Local Government, on being satisfied that any estate is suffering from gross mismanagement to an extent which has,



*The Oudh Rent Bill.**(Chapter X.—General.—Sections 130-132.—Schedule A.)*

since the first of January, 1886, materially deteriorated the condition of the tenantry, or diminished the area of cultivation, may, with the previous sanction of the Governor General in Council, appoint an officer for the revision of the rents of the estate and their authoritative settlement for a period not exceeding ten years.

II of 1877. 130. Notwithstanding anything contained in the Indian Registration Act, 1877, pattas granted for any term not exceeding seven years by landlords to tenants to whom sections 35 and 35(A) of this Act apply shall be deemed good and valid without the same being registered.

131. The provisions of sections 4, 35, 35(A), 36, 36(A), 36(B), 36(C), 36(D), 36(E), 36(F), 36(G), 36(H), and 38(A) shall not extend to the areas specified in Schedule B attached to this Act, but the Local Government may hereafter, from time to time, by a notification published in the official Gazette, extend these provisions, or any of them, to any area hereby excluded.

132. The Local Government may, from time to time, make rules consistent with this Act for the guidance of all persons in matters connected with the enforcement of this Act.

[Act XII, 1881, section 211.]

All such rules shall be published in the official Gazette, and shall thereupon have the force of law.

## SCHEDULE A.\*

(See section 15.)

I, A. B., of \_\_\_\_\_, &c., solemnly declare that I did personally [or by my agent C. D.] on the \_\_\_\_\_ day of \_\_\_\_\_ tender payment to E. F. at \_\_\_\_\_ (the place where the rent of the lands at \_\_\_\_\_ held [or cultivated] by me under or from or jointly with the said E. F. is usually payable) of the sum of rupees \_\_\_\_\_ as and for the whole amount due from me in respect of the rent of the said lands from the month of \_\_\_\_\_ to the month of \_\_\_\_\_ both inclusive. I further declare that the said E. F. refused to accept the said sum so tendered [or to give me a receipt in full, forthwith, for the sum so tendered]. And I declare that, to the best of my belief, the sum of rupees \_\_\_\_\_ so tendered, and which I now desire to pay into Court, is the full amount which I owe the said E. F. on account of the rent of the said lands from the month of \_\_\_\_\_ to the month of \_\_\_\_\_ both inclusive, and that I owe the said E. F. no further sum on account of the rent of the said lands.

I, \_\_\_\_\_ the person named in the above declaration, do declare that what is stated therein is true to the best of my information and belief.

If this declaration is made by an agent, it must be altered accordingly.

*The Oudh Rent Bill.**(Schedule B.—Schedule C.—Schedule D.)*

## SCHEDULE B.\*

*(See section 13.)*

Court of the                      of                      Dated the  
day of                      18                      .  
To R.F., of                      , &c.

With reference to the within declaration, you are hereby informed that the sum of rupees                      therein mentioned is now in deposit in this Court, and that the above sum will be paid to you or your duly authorized agent on application. And take notice that if you have any further claim or demand whatsoever to make against the said A. B. in respect of the rent of the said lands, you must institute a suit in Court for the establishment of such claim or demand within six calendar months from this date, otherwise your claim will be for ever barred.

## SCHEDULE C.

*(See section 59.)*

Office of                      , officer appointed to sell distrained property.

A. B.—Distrainger.

Whereas the said A. B. has applied to have the distrained property specified below sold for the recovery of alleged to be due to him as arrears of rent, you hereby are required either to pay the said sum to the said A. B. or to institute a suit before the Court to contest the demand within fifteen days from the receipt of this notice, failing which the property will be sold.

Dated this                      day of                      188                      .

## SCHEDULE D.

*(See section 131.)*

\* This to be by endorsement on a copy of the declaration under Schedule A made by the person paying the money into Court.

## STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill, which has been prepared by the Government of the North-Western Provinces and Oudh, is to secure to tenants in Oudh some protection against arbitrary eviction from their holdings and enhancement of their rents, and to place on a clear footing their right to make improvements on their holdings and to receive compensation for improvements so made. Under the law as it stands they are absolutely unprotected against enhancement and eviction, provided that the landlord observes certain easy formalities in raising rents or in issuing his notices of ejectment. Every field in a tenant's holding can be shifted on the close of each agricultural year at the will of his landlord, and there is no limit to the rise of rents.

The Census Statistics show that the pressure of the population on the land in Oudh is very great, being 470 to the square mile, and the large number of notices of ejectment annually issued and their steady increase from 23,400 in 1878 to 90,200 in 1882 afford reason for believing that they are used as instruments for the undue enhancement of rent. Enquiry has shown that this belief is not unfounded, and that the effect of the existing law on a population dependent mainly on agriculture for its subsistence must lead at no distant date to the deterioration of agricultural industry and the impoverishment and degradation of the bulk of the people.

It is not proposed to introduce a system of heritable occupancy-right acquired by prescription, such as prevails in the North-Western Provinces, but to accept contract as the basis on which transactions between landlord and tenant are to be regulated. The tenant, however, who has no other means of subsistence open to him, is no match for the landlord in a thickly populated agricultural province, and with a view to place the parties on more equal terms the Bill imposes the following restrictions on free contract between them.

Sitting tenants may hold the land they at present occupy at the rent now paid from the date of the last change in their rent or in the area of the holdings.

The enhancement of rent permissible at the expiry of each statutory period is to be limited to  $6\frac{1}{4}$  per cent., or one anna in the rupee, on the current rental; the sitting tenant to have the equity of renewal at rent within that limit.

At the end of that period it is proposed to allow the landlord to enhance the rent of the sitting tenant to such sum as he and the tenant may agree upon within a limit of one anna in the rupee, or  $6\frac{1}{4}$  per cent., on the rent previously paid.

At any time after the expiration of the statutory period a landlord who has not made terms with the sitting tenant may proceed either by notice of enhancement or by notice of ejectment at his discretion. If he proceeds by notice of enhancement the enhancement must be within the limit above given. If the tenant accepts, a new period begins. If the tenant refuses the proposed enhancement, the holding will become vacant, but no higher rent can be recovered from the next tenant than  $6\frac{1}{4}$  per cent. above the old rent on the same holding. If the landlord proceeds by ejectment, leaving the tenant no option of re-entry, compensation for disturbance will be given up to one year's rent at the rate last paid, and the limitation of  $6\frac{1}{4}$  per cent. will apply to the rent recoverable from the next tenant. In both cases tenants will be entitled to receive before dispossession any compensation due to them for improvements. The right of renewal is to be personal to the tenant in occupancy. On the death of a tenant in occupancy his heir will be entitled to hold on, on the same terms, to the expiration of the statutory period enjoyable by his predecessor, but must then, should the landlord so wish, vacate the holding on payment of the compensation for improvements found to be due to him.

These provisions are experimental, and power is therefore given to the Local Government from time to time, within periods of not less than seven years in any district or part of a district, to vary the limit of enhancement. Although there has been a considerable rise of prices in the past fifteen years, the rise may not continue at the same rate, and in that case the limit of  $6\frac{1}{4}$  per cent. might be unfair to the tenant. In other cases the limitation might conceivably operate to the prejudice of the landlord.

The condition in the taluqdār's sanad—that he will promote the agricultural prosperity of his estate—is so vaguely worded as to leave the Government and the taluqdār alike uncertain as to the grounds on which Government should interfere between him and his tenantry. To put the matter beyond doubt power is given to Government to step in when it is satisfied that an estate is suffering from grave mismanagement, which has since the present year materially deteriorated the condition of the tenantry or diminished the area of the cultivation. The exercise of this power is subject to the previous sanction of the Governor General in Council, and the consequences of it are not the forfeiture of the estate, but an authoritative settlement of rents for ten years.

A similar power of settling rents was conferred in the Bengal Tenancy Act of 1885, the Local Government being authorized to interfere in the interests of public order or of the local welfare.

The detailed reasons for the alterations in the present Act necessary to carry out these proposals will be found in the annexed letter from the Local Government.

*The 29th January, 1886.*

J. W. QUINTON.

No. <sup>177</sup><sub>22-II</sub> R. of 1886.

From

J. WOODBURN, Esq., SECRETARY TO GOVT., N.-W. P. AND OUDH,

IN THE OUDH REVENUE DEPARTMENT,

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,

REVENUE AND AGRICULTURAL DEPARTMENT.

*Dated Allahabad, the 15th January, 1886.*

In compliance with the request conveyed in your letter No. <sup>622</sup><sub>1354</sub> (Revenue), dated the 9th ultimo, I am directed to submit a draft Bill to amend the Oudh Rent Law.

2. The general principles on which the Lieutenant-Governor and Chief Commissioner proposes to amend the Rent Law in Oudh are fully detailed and explained in the letters of this Government, No. 3939 of the 21st December, 1883, and No. 723 of the 12th May, 1884. In this letter submitting the draft Bill it seems sufficient to explain the reasons which have led to the various minor alterations of the present Rent Act.

3. The Bill takes the form of a revised edition of the existing Act. It is very probable that in phraseology and arrangement Act XIX of 1868 might be greatly improved; but it is only in Chapters IV and V that any material change is needed to give effect to the several proposals which have been made by the Lieutenant-Governor. And since the Act is well understood by and familiar to the Rent Courts and the people, it appears advisable to make no more alterations of it than are necessary to a clear and correct statement of the principles which are hereafter to govern the relations of landlord and tenant. But the opportunity has been taken to remove any difficulties that have been found by the Courts in interpreting certain other parts of the existing law. Additions to existing sections of the Act and all new sections are printed in italics; and any portions of existing sections which it is proposed to omit have been printed marginally in brackets.

4. I am now to proceed to a specific statement of the alterations made in the Act.

5. Section 2 repeals Act XIX of 1868, but maintains such notifications and rules made under it as are consistent with the new Act.

6. In section 3 a clause has been added to the definition of "rent," to make it quite clear that the word covers the rent of an under-proprietor who may not be personally in the use or occupation of the land in his tenure. A clause has been added to the definition of "tenant," to show what portions of the Act are applicable to a thikadār. A collector of rents should acquire none of the statutory privileges of a cultivating tenant, but is a tenant of the lessor for many purposes. A definition of "prescribed" has been inserted, which is taken from the Bengal Tenancy Act, 1885.

7. Section 4 is substituted for the corresponding section of the present Act. It is necessary to provide that no contract before or after the passing of the Act shall deprive a tenant of that protection against enhancement and ejectment which it is the special object of the new law to give. The Lieutenant-Governor has decided, after careful consideration of the point, not to recommend that the new law shall be so framed as to prohibit the execution of any special agreement which shall give a tenant a longer occupancy than the statutory period of seven years; but it is essential that agreements for any shorter term shall be barred, and I am to ask that this point may receive particular attention when the draft is examined. The proposal is that the occupation of a holding may be settled between landlord and tenant for a longer period than seven years by agreement, but that no contract shall defeat the statutory limit of enhancement. He is unwilling to interfere more than is absolutely necessary with any existing contracts; and where the terms of any pattas at present in force exclude the tenant from making improvements or claiming compensation for such as he may have already made, he would not set the contract aside. So far as the Lieutenant-Governor's information goes, the number of such contracts is not great, while in many such cases it may be presumed that the improvements will have been made upon special terms and conditions.

8. As regards clearing leases the Lieutenant-Governor is of opinion that they must be left to be arranged by landlord and tenant without interference by the State. The conditions under which they are taken vary considerably in different parts of the country, and are in fact effectively controlled by local circumstances and local custom. A proviso has accordingly been added to this section, the terms of which have been taken from the first proviso to section 178 of the Bengal Tenancy Act.

9. Section 5 (A), empowering a landlord to confer occupancy-rights, has been inserted in accordance with the wish of His Excellency the Governor General in Council, as conveyed in paragraph 15 of your letter No. 252R., dated 12th April, 1884.

10. In section 7 of the present Act the word "lease" is used for the written memorandum of the terms of a tenant's holding. It is scarcely applicable to the record of the terms of a holding conferred by Statute, and the Lieutenant-Governor would prefer to use the word "patta." It is again inconsistent with a statutory tenure that the record of it should contain any conditions except those imposed by the Statute, and the clause of the present section 7, authorising the entry in the patta of any special conditions of the lease, should be omitted.

11. Section 11 of the present Act authorises the cancelment of a lease by decree. It seems desirable that the whole of the provisions in regard to the determination of tenancies should be placed together, and this section, with the material alterations which will be subsequently explained, has been transferred to the chapter on ejectments as 43(A).

12. Section 20 of the Rent Act contains the provincial rule regarding the remission of rent, where it is proved to the Rent Court that from unforeseen calamity the tenant is unable to pay the entire demand. A proviso is attached to the section, which prevents a tenant with a five years' lease from claiming the benefits of this section. If this proviso were retained under the amended Act, which is to give all tenants a statutory occupancy for seven years, the effect would be to nullify the section altogether. The question is, therefore, whether the entire section should be struck out, whereby the Courts would lose their power of making allowances in rent-decrees for inevitable calamities, or whether the section shall stand without its proviso, whereby remissions of rent would cease to be in any case dependent on remissions of revenue. The latter course appears to the Lieutenant-Governor to be on the whole likely to be better for the interests of both landlord and tenant. If, as the Lieutenant-Governor believes, it is not expedient to withdraw from the Courts all power to take account of serious calamities in decreeing arrears of rent, in that case to provide that this power shall only be used when revenue has been remitted is to clutter it with an awkward and hardly logical condition. The corresponding provisions of the rent law in the North-Western Provinces are contained in section 23 of Act XII of 1881 and the rules which have been prepared under it. When the crops have been injured by hail or drought in a village of the North-Western Provinces, the Collector has to apply for a remission of revenue before he can move in the matter of rents; and when that is obtained he enforces a remission of rents, equivalent to double the remission of revenue, by a process which is not always very well adjusted or duly proportioned. There is by law no similar rule in Oudh. Neither in the Revenue nor in the Rent Acts is any authority given to the Deputy Commissioner to carry on, distribute and enforce among the rents of the tenantry the remission which has been made in the landlord's revenue. It is true that under circular orders, issued administratively (of which an extract is given in the footnote), Deputy Commissioners have insisted on remissions of rent as a consequence of remissions of revenue; and the Lieutenant-Governor is not prepared at once to cancel those instructions. Nevertheless, when it comes to framing legal provisions, he would prefer to leave, at any rate experimentally, the adjustment of rent abatements between landlord and tenant as much as possible to the parties concerned, subject only to a Judge's discretion in extraordinary cases. The fact of the revenue remission is perfectly well known, and any tenant who is pressed to pay upon crops that have been seriously damaged has only to demur to the demand and let his claim to relaxation of the rent be considered by the Rent Court. So long as a tenant was liable to summary and arbitrary ejectment, undue pressure for the payment of rent could no doubt be made; but now that all tenants will be protected in the occupation of their holdings, the Lieutenant-Governor considers that with an appeal to the Rent Court, such as is given by section 20, they may be left to make their own arrangements with their landlords on such occasions as those contemplated by the section.

13. The proviso in section 20 is to some extent based on a distrust of the Courts, since they might exercise the power without sufficient cause, and hamper the landlord by remissions of rent for which he has received no compensating remission of revenue. The landlord, however, has always the remedy of appeal from a decree which he considers unfair, and if the case can be supposed possible of calamity so considerable as to justify large remissions of rent by the Court, although no previous remission of revenue had been given, no Deputy Commissioner would refuse to recommend a corresponding remission of revenue. There is again the risk that the Courts might force remissions of revenue by giving remissions of rent; but it must be assumed that the Courts will proceed with due care and upon sufficient evidence in remitting rents, while in Oudh they are likely always to keep in view the effect of their decrees upon the revenue. Moreover, a landlord is certain to contest any unfair reduction of his rent-demand; for a remission of revenue is never sufficient to compensate him, and his appeal is to the Commissioner or Deputy Commissioner, who is directly concerned with the collection of revenue. The Lieutenant-Governor recommends,

Any landlord who receives a remission of Government revenue will be bound, in proportion to the extent of the remission, not to take, either through himself or through a lessee, and to restore if he has so taken, rent for the crop on account of which the remission is granted.—(From Circular Orders of 7th January, 1873.)

therefore, that the section be maintained with the omission of the proviso. The draft proposes to insert "materially" before "diminished", to indicate to the Courts that remission is not to be given for any but considerable loss.

14. Sections 35 and 36 of the present Act will be entirely superseded, and the reference to them in section 20 may be excised.

15. In section 21 (relinquishment of the holding) the last clause of the first sentence may be omitted. The Lieutenant-Governor wishes to make a distinction between relinquishment and abandonment. If tenants are to have considerable fixity of tenure, it is right that the landlord should have fair notice of relinquishment of holding, that he may make suitable arrangements for a new tenant. The date for notice of relinquishment has accordingly been antedated to the 15th of March, and at this time lease to another tenant can hardly have been given. It has been prescribed that the notice shall be in writing.

16. A section has been drafted in regard to abandonment [21 (B)], adopted from section 87 of the Bengal Tenancy Act.

17. In the sections on compensation for tenants' improvements, considerable changes have been made. Section 22 of the present Act directs that the tenant shall be entitled to compensation for improvements whenever his rent is enhanced. This provision has, so far as the Lieutenant-Governor can ascertain, remained a dead letter. Under a system by which the adjustment of rent between landlord and tenant was left entirely to private contract, any enhancement of rent, so long as the tenant chose to stay, probably took into consideration the tenant's expenditure on the improvement of his holding. For the future at least no such provision is needed. The enhancement at the close of a statutory period of tenancy is a statutory enhancement, and will have effect whether or not the tenant has in the course of his expiring period of tenancy effected an improvement which has added to its value. The clauses in section 22, providing for compensation on enhancement, may therefore be left out.

18. The principle on which compensation is calculated under the present Act is solely that of the outlay of the tenant. The last sentence of the section bars right to compensation for improvements which were made more than thirty years before the date of claim, and in practice the procedure of the Courts is to make an estimate of the probable outlay, assume that the improvement will last for thirty years, and award to the tenant the sum which in that proportion represents its unexpired value. Thus, if a well is believed to have cost Rs. 300 ten years ago, the Court will award to the tenant Rs. 200. The principle is by no means a just one, for the landlord is exposed to great exaggerations by the tenant of his original outlay, and where the improvements are of old standing these statements are difficult to check. The Lieutenant-Governor considers that the principles laid down in section 83 of the Bengal Tenancy Act are not only in themselves more fair, but more simply and readily applied by the Courts, for it is seldom difficult in any village to ascertain the difference in letting value due to irrigation, and a well is the most common of all improvements in Oudh. A section has been accordingly introduced from the Bengal Act, section 25(A), and the references to outlay and the period of construction omitted from section 22.

19. It is the recognised custom of the province that a tenant cannot make an improvement of a permanent character without the consent of the landlord. So long as the tenant held on a yearly tenancy at the will of the landlord, this consent was obtained on terms which were sometimes very harsh. I am to refer, for example, to paragraph 127 of Colonel Pringle's report of the 1st June, 1883 (page 277 of the second volume of papers on the condition of the Tenantry in Oudh). Now that the ordinary tenancy is for seven years, it is necessary for the agricultural progress of the country that the landlord's consent to improvements shall not be unreasonably withheld. It has accordingly been proposed in the Bill that the tenant shall have the right of applying to the Deputy Commissioner should the landlord refuse his consent, and that the Deputy Commissioner, after hearing the landlord's objections, shall pass such orders as may be fair and equitable.

20. On the other hand, it is right, when enhancement is otherwise carefully restricted, that arrangement should be made for the assessment of a fair enhancement on holdings the produce of which has been increased by a landlord's improvement, and sections 26 and 36 (K) of the Bill have been drafted for the assistance of landlords in this matter.

21. Section 25 of the present Act is believed to have been of very little, if any, value. It has, however, been retained in section 25 (A) of the Bill in a shorter form, taken from the second clause of section 83 of the Bengal Tenancy Act.

22. Chapter III of the Oudh Act refers to commutation and payment of rents in kind. The Lieutenant-Governor proposes to omit the last two clauses of section 28 and the whole of section 29. The commutation of grain-rents is an exceedingly delicate and difficult business, while the prevailing opinion as to the advantages and disadvantages of commutation is apt to vary greatly, the authorities leaning sometimes on one side, sometimes on the other. It can hardly ever be expedient that the Government shall interpose, during the currency of a settlement, to determine officially a question of this nature, which is essentially connected with local circumstances and conditions of agriculture that are best adjusted by mutual consent; and, since, in fact, the authoritative commutation of rents

is hardly known in Oudh, the Lieutenant-Governor would prefer to leave it, by law, to private arrangement between landlord and tenant, except when a settlement of revenue is in progress. The transition from rents in kind to cash-rents is gradually spreading with the improvement of agriculture, and the process should be left to its natural and spontaneous course.

23. Chapter IV of the Act deals with the enhancement and settlement of rent. So far as it concerns the rent of tenants with a right of occupancy, they are left untouched. In the two sections, 35 and 36, of the Act are contained the whole of the provisions of the present law in regard to the rent of other tenants. To introduce the scheme sketched in paragraph 69 of my letter of 21st December, 1883, the sections numbered 35 to 36 (K) have been substituted for them in the Bill. They give every tenant a statutory right to occupy his holding for seven years, with a new period beginning from every change in rent or area by the landlord, and at the end of every period of tenancy they give him the preferential claim to continue in his holding at a rent that cannot be more than  $\frac{1}{4}$  per cent. in excess of the previous rent, or, if he be ejected, to be paid compensation for disturbance. In short, the landlord cannot disturb the tenant for seven years, and if after that period he desires to eject he must pay compensation. In no case can enhancement of rent, whether upon the sitting tenant or his successor, exceed  $\frac{1}{4}$  per cent. of the old rent; but if the sitting tenant will not agree to an enhancement thus limited he must quit without compensation. The new sections also provide that enhancement shall be by notice; they prescribe a procedure for contesting the notice; and detail the liabilities of the tenant, when he retains or vacates the holding, with or without objection to the notice (clauses 1, 2, and 4, paragraph 69, above quoted). The rights of a tenant are, however, to be personal, and provision has been made in sections 36 (I) and 36 (H) that the heir of a tenant who dies shall retain the holding only till the expiry of the statutory term current at the time of his death; and, subject to any claim by the heir to compensation for improvements, the landlord is left free to let the holding to any person at any rent which may be arranged (clause 6, paragraph 69). The new tenant under section 35 (A) then acquires statutory rights similar to those enjoyed by his predecessor.

24. In section 36 (J) power has been taken by the Local Government to vary the limit of enhancement at stated intervals (clause 3, paragraph 69).

25. In Chapter V of the Act are the provisions for ejectment and the determination of tenancies. In this there has again been much addition and, for the sake of clearness, some re-arrangement of the sections.

26. Section 37 of the Bill reproduces section 41 of the Act unchanged, and states that a tenant with a right of occupancy, and in certain other cases, may be evicted only by a decree for ejectment. Among these tenants is included, by the present Act, a tenant under a special agreement. A tenant evicted by decree is not entitled to the compensation for disturbance given to the statutory tenant of the Bill. The Lieutenant-Governor is of opinion that the section should continue to cover the case of a tenant under special agreement.

27. Section 38 of the Bill is with some alteration section 42 of the Act. It covers the case of all other tenants, and permits their eviction either by a decree for ejectment under section 43 (A) of the Bill, or by an application where decreed arrears of rent remain unpaid, or by the notice of ejectment prescribed by the present Act. The application for ejectment for arrears has been taken from section 35 of the North-Western Provinces Rent Act (XII of 1881), and is a simpler procedure, which the improved position of the tenant justifies, than the application in execution of decree allowed by the present Act.

28. If the landlord proceeds by notice he is required by section 38 (A) of the Bill to deposit the compensation for disturbance, which was part of the scheme of the letter of December, 1883 (paragraph 69, clause 4).

29. In section 39 of the Bill (43 of the Act), which describes the details to be given in the notice, the only important change is that the time of service is put much earlier in the year (15th of November instead of 15th April). Tenancies will now be of seven years' duration, and it is very desirable that notice should be given in sufficient time to admit of all claims on the ground of improvement or other objections being fully sifted and decided before the expiry of the year.

30. Section 40 of the Bill (section 37 of the Act) then details the grounds on which the notice of ejectment may be contested. To the grounds given in the Act have to be added those which the new provisions in the Bill require. The notice may have been issued before the seven years of the statutory tenancy have expired, or the compensation for disturbance may have been deposited only in part or not at all. In sections 40 (A) and 40 (B) of the Bill the tenant is required, if he has any claim to compensation for improvements, to give a specific statement of his claim, and the Court is to determine it before it allows eviction. From the ambiguous language of the Act there have been contradictory rulings in the Rent Courts of Oudh as to the liability of the tenant to eviction before receipt of compensation due to him for improvements. It was clearly the intention of section 22 that he should be compensated before he was removed, and this is definitely expressed in the Bill.

31. Sections 41 and 42 of the Bill represent sections 44 and 45 of the Act with such alterations as the provisions of the preceding sections or experience in the working of the



present Act require. In section 42 of the Bill a clause has been inserted, which was much wanted, enabling the Court to give assistance to the landlord, when needed, to evict a tenant who has contested a notice unsuccessfully. These sections contain the only provisions by which a landlord can remove a tenant of bad character, and no tenant is so likely to resist any action by the landlord himself. If assistance may be properly asked when the tenant has not contested the notice at all, it is more needed when the notice has been contested without valid ground of objection. The section in its present form follows the provision of section 40 of the North-Western Provinces Rent Act.

32. Section 43 of the Bill has been taken, as already explained, from the Rent Act of the North-Western Provinces.

33. Section 43(A) is the provision which the Lieutenant-Governor would substitute for section 11 of the Act, in regard to the terms on which a tenancy may be determined by a decree for ejectment. Section 11 bases it on a failure to perform or observe any of the stipulations of the lease or patta; but the patta of a statutory tenant will not contain any special stipulations, and when such a tenant defaults in his rent the landlord's process will be under section 43 of the Bill.

Even a statutory tenant, however, should be liable to ejectment if he uses his holding in a manner which renders it unfit for the purposes of his tenancy, and provision to that effect, taken from section 44 of the Bengal Tenancy Act, has been introduced in section 43(A) of the Bill. Moreover, many statutory tenants will hold on grain-rents; and as the amount of the landlord's receipts depends on the area the tenant cultivates, the landlord should be ensured against serious damage by the tenant's deliberate neglect to cultivate. In paragraph 77 of my letter of December, 1883, it was recommended that local custom should be left to decide what extent of failure in cultivation should be followed by forfeiture of the holding. This is the object of the second clause in section 43(A) of the Bill.

Tenants, however, "having a right of occupancy, or holding under an unexpired lease, or special agreement or decree of Court," are protected by section 41 of the Act (37 of the Bill) from eviction, except in execution of a decree for ejectment. The section specifies that a decree for ejectment against a tenant with a right of occupancy shall not be made unless at the date of the decree a decree against him for an arrear of rent has remained for fifteen days unsatisfied; but no definite explanation is given of the conditions under which ejectment may be made of the other classes of tenants specified in the section whether for failure in stipulations in the unexpired lease or special agreement, cessation of the effect of the decree of Court, or other ground for eviction. The Lieutenant-Governor presumes that it has been hitherto left to be decided under the general law whether the grounds for eviction in any such case are or are not sufficient, and that it is unnecessary to give any precise specification. This is, however, a matter on which the Legislative Department will advise.

34. In sections 44 and 45 of the Bill, corresponding to sections 38 and 39 of the Act, the period of the year at which ejectment may take place. A sub-lessee is subjected to a special penalty in section 38(A) of the Bill, and there seems no reason for excepting him from the general rule that ejectment shall take place at the close of the agricultural year. As a statutory tenant he could only then be ejected, and for the same reason the last clause of section 38 of the Act should be omitted.

35. In section 39 of the Act the word *thikadār* has been substituted for sub-lessee.

36. Section 40 of the Act has been practically absorbed in Section 43 of the Bill.

37. To this chapter of the Act two sections have been added in regard to *sir*-lands. The Lieutenant-Governor accepts the opinion that in the home-farms of the landlords no statutory rights should be recognised in the tenants who may from time to time be admitted to cultivate in them. The principle is recognised in the Tenancy Acts of the North-Western Provinces and Bengal. Whenever, however, statutory rights are recognised outside the private lands of the zamindar, it becomes necessary to define what these private lands are. Hitherto there has been in Oudh no special reason for entering as *sir* in the rent-rolls land which is not *sir*; for the change of law now proposed, which is to restrict the arbitrary powers of landlords over all holdings that are outside *sir*, has not been anticipated, and the revision of assessment is still sufficiently distant to make it more convenient for the collection of rent that land let to tenants shall be so recorded. From all that has been reported the village rent-rolls are in this respect, as indeed in most others, very fairly correct; and the Lieutenant-Governor is disposed, therefore, to make a less exacting definition of *sir* than that in force in the North-Western Provinces. The definition of *sir* which is given in section 46 (A) of the Bill is for these reasons less stringent in several particulars than that which is laid down in section 3 of the North-Western Provinces Rent Act. It has been proposed on some authority to adjust this definition on the principle of allowing land to fall into *sir* and again to fall back into ordinary tenancy land by fixing certain periods after which continuous cultivation by the landlord or by a tenant should determine the character of the cultivating occupancy. The rule of the North-Western Provinces is to fix a long period of continuous cultivation by the landlord, and then to make the lands so cultivated a permanent addition to his original *sir*, whether he continues to cultivate or lets to a tenant. The Bengal Act prevents any accession to the present *sir* unless it is recognised by village custom.

The Lieutenant-Governor would have been glad, nevertheless, to admit a proposal which is quite in keeping with the fluctuations of all agricultural enterprise, and the developments and depressions which circumstances frequently induce in agricultural families. No adjustment, however, has been discovered to regulate the recognition of lands as sir and their restoration to the normal conditions of tenancy which the landlord will not be able so to manipulate as to exclude from the statutory provisions an area of cultivated land considerably larger than that which he for the time being occupies. For the purposes of the landlord's cultivation, moreover, there is no restriction on its development. When a tenant's holding falls in by his death, it is open to the landlord to occupy it himself instead of letting it to another tenant. Whether, therefore, it is called sir or not will merely operate in determining whether the landlord can subsequently let it without initiating the usual statutory privileges in his tenant. After mature consideration the Lieutenant-Governor is of opinion that sir to the extent of all present requirements is provided by the definition as it stands in the Bill, that this may, as in the North-Western Provinces and Bengal, be permanently excluded from the operation of the sections which regulate the ordinary holdings of tenants, but that for the future no provision should be made by the law to enable a landlord, by private cultivation for any definite period, to remove permanently any lands from the general operation of those sections.

38. The section 46 (B) of the Bill has been added to meet the case of lessees and mortgagees who during their management have brought lands under their personal cultivation. These are lands which, on the expiry of the lease or redemption of the mortgage, are paying no rent; and unless some express provision is made, the lessee or mortgagee would apparently have not only the statutory rights of a tenant, but be entitled to sit rent-free.

39. In Chapter VI (Distress for Arrears of Rent) the Lieutenant-Governor proposes no change.

40. In Chapter VII (Jurisdiction of the Courts) the change are few.

41. In the preamble of section 83 a small change has been made in the terms of section 93 of the North-Western Provinces Rent Act, excluding definitely the jurisdiction of all Courts other than Courts of Revenue in the classes of cases specified.

In clause 3 it seems unnecessary to limit a suit for enhancement to the case of an occupancy-tenant. A lessee in whose lands there may be large alluvion may be liable to a suit for enhancement.

The last part of clause 4 is unnecessary for reasons stated in an earlier part of this letter.

In clause 9 an addition is necessary from the terms of section 26 of the Bill.

In clause 10 an addition is required by section 21 (A) of the Bill.

42. In section 91 an addition is proposed authorising the Local Government to invest any officer of the grade of a Deputy Collector with the powers of a Deputy Commissioner to hear applications by a tenant under section 24 to make improvements, or of a landlord under section 43 to eject a tenant for arrears of rent.

43. Section 102 of the Act gives summary powers to Deputy Collectors to restore possession which has been illegally disturbed. From orders under this section there is no appeal. Against this section there has been much complaint, and now that the position of the tenant will be comparatively secure it is preferable that the restoration should be by ordinary suit, subject to the usual appeal. For this section of the Act has been substituted a provision enabling the landlord to recover a fair rent for land which has been occupied without his permission. The absence of any such provision has been for many years a frequent cause of notice of ejection. The only course open to the landlord hitherto, when a tenant has added surreptitiously to his holding, has been to eject him, or to attack him by the cumbrous process of a suit in the Civil Court for damages. If the land happened to be unlet in the previous year, the provisions of sections 85 and 86 of the Act prevent the landlord from recovering any rent in the Rent Court.

44. Section 112 of the Act requires that in all suits under the Act the summons to the defendant shall be for the final disposal of the suit. The suit is in many cases intricate, and will hereafter involve and concern tenancies of a longer and more valuable character. It is proposed to limit this provision to specified classes of suits.

45. Section 116 of the Act is no longer consistent with the general provisions of the Bill, and should be omitted.

46. Section 125 of the Act provides that sale of an under-proprietary tenure shall not be made if satisfaction of the decree can be made by management of the tenure under sections 243 and 244 of the Civil Procedure Code of 1859 (or the corresponding sections of the Code of 1882). Management of under-proprietary tenures by the Deputy Commissioner has for some time, however, been recognized as practically impossible. They are generally small; as they come under the Deputy Commissioner's charge, they are usually scattered; and official management can be neither efficient nor economical. If the under-proprietor can give the Deputy Commissioner any anticipation that a private adjustment of

the judgment-debt can be effected by mortgage or otherwise, time can always be given under section 305 of the Code of 1882, and the Lieutenant-Governor's opinion on the whole is that all of the section, except the first sentence, may be without disadvantage omitted.

47. In a concluding chapter (X) of the Bill are entered four new sections.

48. Section 129 reserves to the Local Government authority under the sanction of the Governor General in Council to appoint an officer for the revision of rents in an estate in which from grave mismanagement the condition of the tenantry has been materially deteriorated or the area of the cultivation diminished. This formed the seventh clause of the scheme in paragraph 69 of the letter of 21st December, 1883, and the reasons for the provision have been there sufficiently explained.

49. Under the present registration law all pattas for seven years, for however small a sum, must be registered. The inconvenience of an enforced registration throughout the country would be very serious; and as the pattas of all tenants will be checked by the supervisor-kanungos, registration seems to be unnecessary. The object of registration is practically effected by his verification, and personation will be difficult when the verification is made in the course of his village rounds. It is proposed, therefore, in section 130, to exempt pattas for the statutory period of seven years from the Registration Act.

50. In section 131 reference is made to a schedule, in which will be entered certain tracts which the Lieutenant-Governor proposes to exclude from the general rule of a statutory right to a seven years' holding. It has been explained in paragraph 73 of the letter of December, 1883, that in part of the northern and submontane districts the rent customs are exceptional, the area in cultivation varies with the season, and the rent is separately settled at each harvest. With these circumstances the general proposals of the Bill will not fit in; but in these tracts the population is sparse, and the tenants can command their own terms. A detail of the areas to be scheduled will be forwarded subsequently.

51. In the last section (132) of the Bill power is taken to the Local Government to make any rules necessary under the Act and consistent with it. The terms of the section have been taken from the last clause of section 211 of the North-Western Provinces Rent Act.

S. HARVEY JAMES,

*Offg. Secretary to the Government of India.*

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 9th June, 1886, and was referred to a Select Committee:—

## NO. 8 OF 1886.

*A Bill to alter the constitution of the body corporate known as the Trustees of the Indian Museum, and to confer certain additional powers on that body.*

WHEREAS it is expedient to alter the constitution of the body corporate known as the Trustees of the Indian Museum, and to amend the law relating to the powers of the said Trustees; It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Museum Act, 1886; and

(2) It shall come into force at once.

2. Sections 3, 4 and 5 of the Indian Museum Act, 1876, are repealed.

3. For those sections the following shall be substituted, namely:—

## "Incorporation of the Trustees.

Constitution and incorporation of the Trustees of the Indian Museum.

"3. The Trustees of the said Indian Museum shall be—

(a) the person for the time being holding the office of Accountant General of Bengal;

(b) five other persons to be appointed by the Governor General in Council;

(c) five other persons to be appointed by the Lieutenant-Governor of Bengal;

(d) five other persons to be appointed by the Council of the Asiatic Society of Bengal; and

(e) five other persons to be appointed by the Trustees;

and the said Trustees shall be a body corporate, by the name of the Trustees of the Indian Museum, and shall have perpetual succession and a common seal.

"4. All the powers of the said body corporate may be exercised so long and so often as there are nine members thereof.

"5. If a trustee appointed under section 3 dies, or is absent from India for more than twelve consecutive months, or desires to be discharged, or refuses or becomes incapable to act,

or becomes Accountant General of Bengal, then the authority which appointed the trustee may appoint a new trustee in his place."

4. (1) For the purposes of the Indian Museum Act, 1876, as amended by XXI of 1876, the Trustees of this Act—

(a) the persons nominated by the Governor General in Council under the Indian Museum Act, 1876, and now holding office as Trustees, shall be deemed to be persons appointed by the Governor General in Council under section 3 of that Act as amended by this Act;

(b) the President of the Asiatic Society of Bengal, and the other members of the Council of that Society nominated by that Council under the Indian Museum Act, 1876, and now holding office as Trustees, shall be deemed to be persons appointed by the Council of the Asiatic Society of Bengal under the said section; and

(c) the persons elected and appointed by the Trustees under the said Act, and now holding office as Trustees, shall be deemed to have been appointed by the Trustees under the said section.

(2) The Secretary to the Government of India and the Superintendent of the Geological Survey of India shall cease to be *ex officio* members of the said body corporate.

Power to Trustees to keep collections not belonging to them.

5. Notwithstanding anything in the Indian Museum Act, 1876,—

XXII of 1876.

(a) the Trustees of the Indian Museum, if they think fit, may, with the previous sanction of the Governor General in Council, and subject in each case to such conditions as he may approve and to such rules as he may from time to time prescribe, assume the custody and administration of collections which are not the property of the Trustees for the purposes of their trusts in that Act mentioned, and keep and preserve the collections either in the Indian Museum or elsewhere; and

(b) in the event of the trust constituted by that Act being determined, collections of which the Trustees have assumed the custody and administration under the foregoing part of this section shall not, by reason of their then being in the Indian Museum, become the property of the Government of India.

And whereas it is provided in the Indian Museum Act, 1876, that the Trustees of the Indian Museum shall have the exclusive possession, occupation and control, for the purposes of their trusts in that

XXII of 1876.

Act mentioned, of the whole of the building called the Indian Museum, except certain portions thereof set apart for other purposes; and whereas the Trustees are by virtue of that provision in possession of the property described in the schedule to this Act; It is hereby enacted as follows:—

6. The Trustees may, with the previous sanction of the Governor General in Council, and subject to such conditions as he may approve, deliver possession of that property to such person as the Lieutenant-Governor of Bengal may appoint in that behalf.

#### THE SCHEDULE.

Land bounded on the north by a straight line drawn between the east and the west boundaries parallel to the main south wall of the Museum at a distance of twenty-five feet from the said wall, on the west and south-west by the Chowringhee Road and the walls of the premises known as No. 29 Chowringhee Road, on the south by Kyd Street, and on the east by the walls of the premises known as No. 15 Kyd Street and No. 4 Chowringhee Lane, measuring in all four acres, three roods and sixteen perches, together with all buildings, roads and tanks existing or erected thereon, and all easements appertaining thereto.

#### STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to give effect to an arrangement, made with the approval of the Government of India, whereby—

- (a) the Bengal Government is to be represented among the Trustees of the Indian Museum;
- (b) the Bengal Government is to entrust the Trustees with the custody and administration of the economic, ethnological, Indian Art-ware and Fine Art collections belonging to that Government; and
- (c) the Trustees, in consideration of the provision by the Bengal Government of additional accommodation required by them, are to surrender certain land adjacent to the Museum on which that Government may build a School of Art and Art Gallery.

Sections 3 and 4 provide for the representation of the Bengal Government among the Trustees, and sections 5 and 6 empower the Trustees to assume the custody of the collections belonging to the Bengal Government, and to make over to that Government the land on which the School of Art and Art Gallery are to be built.

The 25th May, 1886.

S. C. BAYLEY.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.



grant or refuse, either absolutely or on terms, any application for the arrest or imprisonment of the defaulter, or for his release from arrest or discharge from imprisonment.

[Act XIV, 1882, s. 287; 22 & 33 Vic., c. 62, s. 5.] 6. (1) The High Court, with respect to Courts subordinate to it, and the Chief Controlling Revenue-authority, with respect to Courts subordinate to it, may, with the approval of the Local Government and the sanction of the Governor General in Council, make rules for regulating the procedure to be observed in inquiries for determining whether the case of a defaulter for whose arrest or imprisonment application has been made is a case coming within the exceptions specified in clauses (c) and (d) of section 4, or within either of those exceptions.

(2) Rules may be made under this section—

(a) for the territories administered by the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh, at any time after the passing of this Act, and

(b) for territories under the administration of any other Local Government, at any time after the publication of the notification extending this Act to those territories or to any class of debtors therein;

but rules so made shall not take effect until the Act comes into force in the territories for which they have been made.

(3) An authority making rules under this section shall, before making the rules, publish a draft of the proposed rules in such manner as the Governor General in Council, by notification in the Gazette of India, prescribes.

(4) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(5) The authority making the rules shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(6) A rule made under this section shall not take effect until it has been published in the local official Gazette.

(7) The publication in that Gazette of a rule purporting to be made under this section shall be conclusive proof that it has been duly made.

7. The operation of the enactment under which the defaulter is liable to

Provisions as to imprisonment under Act. arrest or imprisonment in any case coming within the exceptions specified in clauses

(b), (c) and (d) of section 4, or within any of those exceptions, or is entitled to release from the arrest or discharge from the imprisonment, shall be subject to the following provisions, namely:—

(a) the defaulter may be imprisoned for such term, not exceeding six months, as the Court directs;

(b) no allowance for the subsistence of the defaulter, or for supplying him with clothing or bedding, shall be payable by the person on whose application the order for the imprisonment of the defaulter is made;

(c) during the term of his imprisonment the defaulter shall be maintained at the

expense of the Government, and be subject, as nearly as circumstances admit, to the discipline prescribed in the case of a criminal prisoner undergoing simple imprisonment;

(d) notwithstanding the payment of the money in respect of which the decree or order was made, or any arrangement for the payment thereof or proof of present inability to pay it, or any expression of intention to apply for a declaration of insolvency, or any declaration of insolvency, or any request by the person on whose application the order for the arrest or imprisonment was made, the defaulter shall not be released from arrest, or, if he is in prison and the term of his imprisonment is not fulfilled, be discharged from prison, without the order of the Court;

(e) an appeal from the order for the imprisonment of the defaulter, and from an order refusing his release or discharge under clause (d) of this section, shall lie—

(i) if the Court making the order is a Civil Court subordinate for the purposes of the Code of Civil Procedure to the District Court, then to the District Court,

(ii) if the Court making the order is any other Civil Court, then to the High Court, and

(iii) if the Court making the order is a Revenue Court, then to the authority to which appeals lie from orders of the Court relating to the execution of decrees, or, where those orders of the Court are final, to such authority as the Local Government may, by notification in the official Gazette, appoint in this behalf;

and the order passed on the appeal shall be final.

8. Where the Court is of opinion that the defaulter has been guilty of any offence under the Indian Penal Code or under any enactment for the time being in force for the punishment of fraudulent debtors, it may, if it thinks fit, instead of ordering his imprisonment under this Act, send him to a Magistrate to be dealt with according to law.

9. Notwithstanding anything in Chapter XXXIV of the Code of Civil Procedure, or any other enactment, a defendant in a suit for money only who has been arrested before judgment shall not, as such, either be required to give security for his appearance at any time after the day on which judgment is given, or, if he has been committed to prison, be detained in prison after that day:

Provided that, if judgment is given against the defendant, and the decree-holder applies, on the day on which judgment is given, for the enforcement of the decree by the imprisonment of the judgment-debtor, the Court may require the judgment-debtor to give such security as it thinks

[Act XIV, 1882, s. 312; Act XII, 1881 s. 163.]

[Act XIV, 1882, s. 389; Act XII, 1881, s. 167 and Act XXVI, 1870, s. 30.]

[Act XIV, 1882, s. 341; Act XII, 1881, s. 103.]

[Act XII, 1882, s. 29.]

[Act XIV, 1882, s. 341.]

[Act XII, 1881, s. 167.]

[Act XIV, 1882, s. 341; Act XII, 1881, s. 103.]

[Act XIV, 1882, s. 341.]

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[Act XIV, 1882, s. 341.]

[Act XIV, 1882, s. 341.]

[Act XIV, 1882, s. 341.]





9. The Act, however, contains certain special provisions with respect to an arrested judgment-debtor. Under section 29 the Court may release him from arrest on his giving security for payment. And under section 30, if it appears to the Court that a judgment-debtor under its decree is unable, from sickness, poverty or other sufficient cause, to pay the amount of the decree, or of any instalment under the decree, the Court may, from time to time, for such time and on such terms as it thinks fit, suspend the execution of the decree, and release the debtor, or make such order as it thinks fit.

10. In the four districts of the Dekkhan to which the Dekkhan Agriculturists' Relief

\* "No agriculturist shall be arrested or imprisoned in execution of a decree for money passed whether before or after this Act comes into force." (Act XVII of 1879, s. 21, as amended by Act XXII of 1882, s. 8.)

Acts apply arrest and imprisonment for debt have been abolished in the case of agriculturists.\* And certain special Acts for the relief of embarrassed landholders contain provisions protecting the debtor from arrest or imprisonment in respect of the debts

to which the Acts apply.

#### *Imprisonment for Debt in England.*

11. Imprisonment for debt was abolished in England by the Debtors Act of 1869 (32 & 33 Vic., c. 62), except in the following cases:—

- (1) default in payment of a penalty, or sum in the nature of a penalty, other than a penalty in respect of a contract;
- (2) default in payment of a sum recoverable summarily before a Justice or Justices of the Peace;
- (3) default by a trustee or person acting in a fiduciary capacity and ordered to pay by a Court of Equity any sum in his possession or under his control;
- (4) default by a solicitor in payment of costs, when ordered to pay costs for misconduct as such, or in payment of a sum of money, when ordered to pay the same in his character of an officer of the Court;
- (5) default in payment for the benefit of creditors of any portion of a salary or other income, in respect of the payment of which any Court having jurisdiction in bankruptcy is authorized to make an order;
- (6) default in payment of sums in respect of the payment of which orders may be made under the Act (that is, cases of contumacious refusal under section 5 of the Act, see para. 14).

12. The term of imprisonment in these excepted cases must not exceed one year (s. 4).

13. In cases (3) and (4) the Court has power to enquire into the case, and at discretion to grant or refuse an order for arrest or imprisonment (41 & 42 Vic., c. 54, s. 1).

14. Under section 5 of the Act of 1869, a Court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt, or instalment of any debt, due from him in pursuance of any order or judgment of that or any other competent Court. But the power is not to be exercised unless it is proved to the satisfaction of the Court that the person making default has, or has had, since the date of the order or judgment, the means to pay the sum in respect of which he has made default, and has refused or neglected to pay it. "Proof of the means of the person making default may be given in such manner as the Court thinks just, and for the purposes of such proof the debtor and witnesses may be summoned and examined on oath, according to the prescribed rules." A summons under this section is usually called a judgment summons.

15. It will be observed that all the cases in which a debtor is liable to imprisonment

† Lord Hatherley, L. C., in *Middleton v. Chichester*, L. R. 6 Ch. 152.

‡ Jessel, M. R., in *Morris v. Ingram*, L. R. 13 Ch. Div. 329.

debtors.

under the Act of 1869 involves some degree of delinquency.† And it has been held by high authority‡ that the Act was distinctly intended for the purpose of punishing fraudulent or dishonest

16. Sums recoverable summarily before Justices, or, as they are called in modern statutory language, Courts of summary jurisdiction, are usually fines. But as ordinary civil debts are in some cases so recoverable, it has been provided by the Summary Jurisdiction Act, 1879 (42 & 43 Vic., c. 49, section 35) that an order of a Court of summary jurisdiction for the payment of a civil debt is not to be enforced by imprisonment, unless the case is such as would make the debtor liable to imprisonment under section 5 of the Debtors Act, 1869.

#### *Imprisonment for Debt in Scotland.*

17. In Scotland imprisonment for debt for sums under £8-6-8 was abolished in 1835 by 5 & 6 Wm. IV, c. 70, but alimentary debts (that is, debts for the support of the debtor's wife or children) were excepted from the operation of that Statute. In 1830 was passed the Debtors (Scotland) Act, 1830 (43 & 44 Vic., c. 34), which enacts, by section 4, that,

"with the exceptions hereinafter mentioned, no person shall, after the commencement of this Act, be apprehended or imprisoned on account of any civil debt.

"There shall be excepted from the operation of the above enactment—

- (1) taxes, fines or penalties due to Her Majesty, and rates and assessments lawfully imposed or to be imposed;
- (2) sums decreed for alimony;

"Provided that no person shall be imprisoned in any case excepted from the operation of this section for a longer period than twelve months."

The same Act contains provisions for the relief of insolvent debtors and for the punishment of fraudulent debtors.

18. By the Civil Imprisonment (Scotland) Act, 1892 (45 & 46 Vic., c. 42), imprisonment for alimentary debts was abolished, except in cases where there is a wilful failure to obey the decree for the debt (ss. 3 and 4), and the maximum term of imprisonment for failure to pay rates or assessments was reduced to six weeks (s. 5).

*Imprisonment for Debt in Ireland.*

19. In Ireland the law as to imprisonment for debt is regulated by the Debtors Act (Ireland), 1872 (35 & 36 Vic., c. 57), as amended by 41 & 42 Vic., c. 54, and is practically identical with the English law.

*Proposals for amendment of Indian Law.*

20. On the 17th November, 1881, a circular was addressed by the Government of India to all Local Governments and Administrations, stating that the Government of India had under consideration the question of amending the provisions of the Code of Civil Procedure bearing upon the question of the arrest of *pardiuashdi* women in execution of the decrees of Civil Courts, but that before coming to any final conclusion on the subject the Governor General in Council thought it desirable to deal with the larger question of abolishing imprisonment for debt, and for this purpose to enquire whether sufficient reasons exist for the continued maintenance in India of the present system. Local Governments and Administrations were accordingly requested to favour the Government of India with a full expression of their opinion on the matter.

21. The replies to the circular disclosed much difference of opinion as regards the advisability of maintaining in India the present system of imprisonment for debt.

22. In favour of the maintenance under existing circumstances of the present system of imprisonment for debt were the Madras Government, the Madras High Court, the Bombay Government, the Bombay High Court, the Calcutta High Court, the Calcutta Chamber of Commerce and the Trades Association, Calcutta (unless a change were accompanied by the enactment of a stringent bankruptcy law), the British Indian Association, Calcutta, the Board of Revenue, North-Western Provinces, the Punjab Chief Court, the Chief Commissioner of the Central Provinces, the Chief Commissioner of Assam (provided the law were so altered as to permit the issue of process against the person only after all means of realising the decree by process against property have been exhausted), and the Chief Commissioner and the Judicial Commissioner of Coorg. The arguments which they advanced appear to be in the main the following:—

- (a) that the total abolition of imprisonment for debt in India would be premature, and would remove from the Statute Book the only check upon the fraudulent alienation of property by solvent but dishonest debtors;

- (b) that legislation has proceeded quite far enough in relief of the judgment-debtor,

\* Sir C. Fargut, of the Bombay High Court, wrote:—

"The legal incidents of the undivided Hindu family, the minute distribution of property caused by the Mohammedan law of descent, and, though less not least, the practice of creating bonded titles so common in this country, afford the dishonest debtor endless opportunities of baffling the efforts of the judgment creditor to attach his property."

while there are in India special difficulties in executing a decree by attachment of property when the judgment creditor is a member of an undivided\* family. Creditors are not, it is said, in the habit of proceeding to extremities unless the debtor has the means of liquidating a portion at least of the debt. The men who go to prison are

for the most part those who obstinately refuse to pay their debts, and cases of imprisonment for debt are not numerous;

- (c) that the abolition of imprisonment for debt would deprive lenders of personal security, would thereby depreciate credit, and would involve an increase in the rate of interest, already very high. In the case of agriculturists this might seriously impair their ability to pay the land-revenue;

- (d) that abolition of imprisonment for debt should only be attempted when the habits of secrecy, engendered by centuries of oppression, have partly worn away, and when transactions are open and the registration of deeds and bonds has become habitual. When the debtor's property can be easily traced and seized in execution of a decree, then it will be reasonable and right to withhold execution on the body of a pauper debtor except as a distinctly exceptional and penal measure in the case of fraud.

23. In support of the abolition of imprisonment for debt were the following authorities:—

- (a) the Advocate General of Bengal, who advocated the introduction of the English system, because there is no reason why the matter should not be regulated in India as in England, if proper exceptions and limitations, as contained in the English Debtors Act of 1869, are prescribed, and because the abolition of imprisonment for debt would not cause any public injury, while, on the other hand, the present system in most instances operates only as a means of oppression, to the total ruin of the party imprisoned and of his family;
- (b) the Bengal Government, which, while not prepared to resist the opinions of the local officers that abolition would at present be premature, thought that, if an alteration of the bankruptcy law were at any time undertaken, measures might then be adopted for the abolition of imprisonment for debt in cases where fraud is not established against the judgment-debtor;
- (c) the North-Western Provinces and Oudh Government, which regarded the existing practice of placing in the creditor's hands the power of selecting his own method of coercion as a relic of the old semi-barbarous debt laws which have now been eliminated from almost every civilized code of judicial procedure. The present system operates with severity against all debtors, honest and dishonest, indiscriminately. The power of subjecting a debtor to arrest and imprisonment should be entrusted not to the decree-holder, but to the Courts, and its exercise should be limited to cases where clear proof exists of fraudulent and contumacious attempts on the part of the judgment-debtor to defeat the operation of a decree. Imprisonment is especially hard on the cultivator and working-man, whom it deprives of their means of subsistence and of providing for their families;
- (d) the North-Western Provinces High Court, which advocated the abolition of imprisonment for debt, as it is doubtful whether "any useful purpose is served by the perpetuation in this country of that remnant of barbarism";
- (e) the Punjab Government, which believed that there is some reason to fear that, under the present system, creditors occasionally make use of the law to gratify vindictive feelings or personal spite, and to coerce debtors to sell their land and property at a price below its proper value or to relinquish their just rights. Discretionary power ought to be expressly allowed to the Civil Courts, imprisonment not being resorted to as an ordinary process of execution of a decree, unless the Court is satisfied that there has been fraud or wilful concealment of property;
- (f) the Chief Commissioner of British Burma, who pointed out that the imprisonment of debtors who are paupers, but who are not fraudulent, does no real good to any class, works directly and indirectly great harm to the poorer classes, and causes a distinct loss to the community at large. The practice of permitting such imprisonment has been gradually circumscribed among other civilized nations; among some nations it has absolutely ceased; and there is no reason why the way should not be paved for the disappearance of the system in India. Civil Courts should be allowed to grant execution against the body of judgment-debtors against whom there might be *prima facie* ground for presuming fraud or bad conduct, unless the presumption were rebutted by the judgment-debtor;
- (g) the Judicial Commissioner of British Burma and the Recorder of Rangoon, who were of opinion that imprisonment for debt should be abolished, except in case of fraud, which should be punished criminally. The Recorder recommended that the law as it now obtains in England should be applied to India;
- (h) the Resident at Hyderabad, who considered that the present system of imprisonment for debt is not wanted to compel payment, while it may be used to bring undue pressure to bear upon a debtor, especially in an agricultural country where interest in land is generally given as security for debts. He recommended that imprisonment for debt should be retained only to meet cases in which debtors abscond or endeavour to fraudulently evade meeting their obligations.

24. Thus, the preponderance of opinion was on the whole in favour of the maintenance of imprisonment for debt under the present condition of India, but a considerable and influential minority were in favour of its abolition.

25. The arguments on which the upholders of the present system rely fall into two classes: first, arguments which, if valid at all, are valid for England as well as for India; and, secondly, arguments based on the special circumstances and conditions of India.

26. To arguments of the first class belongs the assertion that "to remove from the Statute Book the penalty of arrest and imprisonment in execution of a decree for money would be to paralyze the commerce and trade of the country." The same objection was made in

\* See Lord Cottenham's speech in 1814 on the Creditors and Debtors Bill; Hansard, 74, page 453.

England, first to the abolition of arrest on mesne process,\* and afterwards to the abolition of arrest on final process. The power of arrest was removed, and neither commerce nor trade shewed any symptoms of paralysis.

27. Those who uphold imprisonment for debt, not as being generally expedient, but as being specially required for India, do so mainly on two grounds: first, the complexity and obscurity of Indian titles to property; and, secondly, the exceptional prevalence of fraud in India, and the exceptional difficulties of detecting it.

As to the first ground, it has been remarked that if it is wrong to allow a debtor to pledge his person as security for his debts, it is not the less wrong because, owing to the defect of Indian property law, he finds difficulty in giving a satisfactory security over his property.

In the argument based on the prevalence of, and difficulty of detecting fraud, there is undoubtedly much force, though it may be doubted whether the obstacles which can be placed in the way of a creditor realizing his debts are not as great in England as in India. But, however this may be, to make an honest, though needy, debtor liable to imprisonment, simply because fraudulent debtors are numerous and difficult to detect, appears to be as unjust as it would be to make homicide by misadventure punishable by death, simply because the crime of murder was rife and hard to prove.

28. There are in the opinion of the Government of India two principles which ought to be observed in every law of debtor and creditor. The Courts ought not to give effect to any pledge by a debtor either of his person or of the bare necessities of life. The debtor ought not to be allowed, by his own action, supplemented by the action of the Courts, either to deprive himself of his personal liberty, or to reduce himself to starvation. If he cannot obtain credit except on one or other of these securities, it is better that he should not obtain credit at all. Experience acquired in the Dekkhan goes to show that these principles are as applicable to India as to England. The Code of Civil Procedure recognises one of these principles by exempting from seizure for debt the debtor's bare means of subsistence. But this recognition is nullified by the refusal to adopt the principle of exempting the debtor's person from seizure. Of what use is it to reserve by law to the debtor the bare necessities of life, when he can be compelled to give them up by the threat of imprisonment? By those who advocate the retention of the present system, much reliance is placed on the very small proportion of actual imprisonments to warrants of arrest; and the inference drawn from this proportion is that the law, though harsh in theory, produces no hardships in practice. But there is reason to believe that, in the great majority of cases, exemption from arrest is purchased either by renewal of bonds on extortionate terms, or by surrender of property which the law has exempted from seizure, or by surrender of property which does not belong to the debtor at all, but to his relations or friends. In other words, the law enables a creditor to do indirectly what it forbids him to do directly.

29. It is said that the honest debtor has an easy way out of prison through the door of insolvency. But in the first place, the honest debtor ought not to be sent to prison at all; and in the next place, the door which is provided for his release is, for some reason or other, very rarely used. There is, or was until recently, a strong concurrence of opinion to the effect that the Insolvency Chapter of the Code of Civil Procedure is practically a dead letter. As to the causes of its failure,—whether it is to be accounted for by the preliminary proceedings being unnecessarily cumbrous or expensive, or by the difficulty of satisfying the Court under section 351 that the debtor has not been guilty of any kind of misconduct, or by ignorance of the law and of the modes of relief available to debtors,—opinions differ; but about the fact of failure there appears to be no difference.

30. Since 1883 the Government of India has received and published reports obtained from Her Majesty's representatives abroad on the systems of imprisonment for debt in force in the various countries to which they are accredited. Those reports showed that imprisonment for debt has been abolished in nearly all civilized countries.

31. Having regard to the state of the law in the United Kingdom, to those reports, to the success which has attended the abolition of imprisonment for debt in the case of agriculturists to whom the Dekkhan Agriculturists' Relief Acts apply, to some expressions to be found in the opinions of the authorities who considered the draft Bankruptcy Bill of 1885, and to the advocacy by the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh, and by the Chief Justice and Judges of the High Court of Judicature for the North-Western Provinces, of the entire abolition of the process of arrest for debt, so far as it is a process that can be set in motion at the discretion of the creditor, and of the enforcement of the process being restricted to cases in which the Courts are satisfied that there have been fraudulent and contumacious attempts to defeat the operation of decrees, the Government of India has decided to introduce a Bill giving effect tentatively and, in the first instance, within a limited area to the policy which dictated the English Act of 1869, and is believed by several authorities of weight to be applicable to India.

#### *Provisions of Bill.*

32. *Sections 1 and 2.*—It is proposed that the measure shall apply in the first instance to the North-Western Provinces and Oudh, and be extendible to other Provinces, or to particular classes of debtors in other Provinces, by Local Governments with the previous sanction of the Governor General in Council.

From the opinions recorded by the Chief Commissioner and by Mr. MacEwen, the Officiating Recorder of Rangoon, on the draft Bankruptcy Bill of 1885, and by the Recorder, Judicial Commissioner and other authorities, European and Native, on the circular of 1881, there appears to be a strong feeling in Burma in favour of abolishing imprisonment for debt where the debtor has not been guilty of fraud. But it is considered desirable that the proposed Act should apply in the first instance to the territories under one Local Government, and that its effect there should be ascertained before the Act is extended to other parts of the country.

The date on which the Act is to come into force in the North-Western Provinces and Oudh is the 1st of January, 1885. If therefore the Bill is passed during the present year, decree-holders will have more than twelve months within which they may proceed against their judgment-debtors under the provisions of the Code of Civil Procedure. In England the period which elapsed between the passing and the coming into force of the Debtors Act 1869, was less than five months.

33. *Section 4.*—This section is based on section 4 of the Debtors Act, 1869, but applies only to arrest and imprisonment for default in compliance with decrees and orders of Civil and Revenue Courts. Clause (c) is specially designed to check those fraudulent alienations of property by solvent but dishonest debtors which are relied on by the opponents of any mitigation of the existing law as the main justification of imprisonment for debt.

34. *Section 5.*—This section, following the 44 & 45 Vic., c. 51, permits the Court to refuse, either absolutely or on terms, an application for the arrest or imprisonment, or for the release or discharge from arrest or imprisonment, of a defaulter who is a trustee or person acting in a fiduciary capacity and is required, as such, to pay any money which is in his possession or under his control, or any money for which he is accountable and of which he has not discharged himself.

The origin and object of this clause are stated as follows by Jessel, M. R., in *Marria v. Ingram* (L. R. 13 Ch. D. 313):—

"Then we come to the Amendment Act of 1878, which was passed to meet a special class of cases, and the history of that Act was this: An application was made before me for the imprisonment of a trustee who had been ordered to pay a sum of money. It was a very hard case, one of an unintentional breach of trust; and though the man was actually dying, I had no alternative but to make an order. Then I had various other cases before me which led me to regret that the Court had no discretion, for it not unfrequently happened that a person who came in strictness under the first class of offences \* was not guilty of any moral offence. Under these circumstances I thought it would be wise and prudent that a discretion should be given to the Courts to deal with exceptional cases, but not with the intention of repealing the existing Act. Mr. Marten, being a member of the Legislature, then adopted my suggestion, and procured this Amendment Act to be passed."

\* That is to say, the defaults specified in 32 & 33 Vic., c. 62, s. 4.

35. *Section 6.*—This section empowers the High Court and the Chief Controlling Revenue-authority to make rules for regulating the procedure to be followed in the Courts subordinate to them respectively in inquiries as to the liability of persons to arrest and imprisonment on the ground of fraud or contumacy.

36. *Section 7.*—This section modifies the operation of enactments authorising arrest and imprisonment for default in compliance with decrees and orders of Civil and Revenue Courts for payment of money.

Clause (a), following the Code of Civil Procedure, limits the term of imprisonment to six months, notwithstanding that section 163 of the North-Western Provinces Rent Act, 1881, authorises imprisonment in certain cases for so long a period as two years.

Clause (b) relieves the decree-holder of the liability to maintain his judgment-debtor while in prison. If imprisonment is retained, not as a mode of enforcing payment but simply as a punishment, it will hardly be possible to continue the liability. This liability existed under the old Insolvency Law in England, and the Act which imposed it was once described as giving the creditor "the power of imprisoning and torturing his debtor at the expense of 8s. 6d. per week."\* If it is abolished, great care should be taken that imprisonment is not inflicted except in cases of misconduct which deserve punishment.

\* Hansard, 74, page 451.

Clause (c) requires that the defaulter, though in the civil jail, shall nevertheless be subject, as nearly as circumstances admit, to the discipline prescribed in the case of a criminal prisoner undergoing simple imprisonment. Where a person is ordered to pay a fine, the nature and term of his imprisonment will be regulated by the general law. This clause relates to the other cases in which a debtor is liable to imprisonment. Those cases, as before observed, all involve some degree of delinquency (L. R. 6 Ch. 157), and the imprisonment contemplated by the Bill, as by the English Act (L. R. 13 Ch. D. 313), is simple, that is, without hard labour. The effect of this clause will be to deprive the defaulter, as a civil prisoner, of the privilege of maintaining himself, and purchasing or receiving from private sources food, clothing, bedding, and other necessaries (Act XXVI of 1870, s. 31).

Clause (d) provides that, except where the arrest or imprisonment is for default in payment of a fine, the defaulter, when once arrested or imprisoned, shall not be released from

arrest, or discharged from prison, without the order of the Court. The Court may grant the order or refuse it. If it refuses the order, the defaulter may appeal.

Clause (c) so far modifies clause (29) of section 588 of the Code of Civil Procedure as to admit of an appeal being preferred from an order for imprisonment in execution of a decree.

37. *Section 8.*—This section follows section 359 of the Code of Civil Procedure in providing that where the Court is of opinion that the defaulter has been guilty of an offence against the Indian Penal Code or any special enactment for the punishment of fraudulent debtors, it may, instead of ordering his imprisonment in the civil jail, send him to a Magistrate to be dealt with according to law.

38. *Sections 9 and 10.*—These sections contain special provisions with respect to arrest before judgment, and save proceedings taken before the Act comes into force.

39. *Section 11.*—It has been decided *In re Heavens Smith* (L. R. 2 Ex. D. 47) that the English Debtors Act of 1869 does not apply to a case in which the defaulter is a debtor to the Crown. It is proposed that the Indian Act shall have the like effect as against the Crown where a decree or order for payment of money is made in its favour by a Civil or Revenue Court, as it will have against a subject.

40. The question of giving the Courts a discretionary power to refuse an order for the arrest and imprisonment of a judgment-debtor, or at least of a female judgment-debtor, will be considered when next the Code of Civil Procedure comes under revision.

The 9th June, 1886.

C. P. ILBERT.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 9th June, 1886:—

NO. 10 OF 1886.

*A Bill to declare certain allowances collectively known as Oudh Wasikas to be pensions within the meaning of the Pensions Act, 1871.*

WHEREAS, on the death of Her Highness the Bahu Begam, His Highness the Nawab Vazir of Oudh delivered to the British Government a sum of money with intent that the interest accruing thereon should, in compliance with the wishes of Her Highness the Bahu Begam as expressed in a Deed of Deposit executed by her in the year 1813, be applied by the British Government to the payment of certain pensions, which pensions are known as the Amanat Wasikas;

And whereas in the year 1813 the said Government guaranteed the payment of certain pensions to persons connected with the Khas Mahal of Her Highness the Bahu Begam, which pensions are known as the Zamanat Wasikas;

And whereas in the years 1814, 1825, 1829 and 1838 loans, known respectively as the 1st, 3rd, 5th and 6th Oudh loans, were made by the Rulers of Oudh to the Hon'ble the East India Company with intent that the interest accruing thereon should be applied by the said Government to the payment of certain pensions, which pensions are known as the Loan Wasikas;

And whereas the said Government reserved to itself the right of commuting the pensions to the

payment of which the interest accruing on the 5th Oudh loan was to be applied;

And whereas the Amanat, Zamanat and Loan Wasikas have been regarded as pensions to which the Pensions Act, 1871, applies, and rules respecting them have been made and published under section 14 of that Act;

And whereas, since the making and publication of the rules, doubt has been expressed whether the said Wasikas are pensions within the meaning of the Pensions Act, 1871;

And whereas it is expedient to declare them to be pensions within the meaning of that Act;

It is hereby enacted as follows:—

1. This Act may be called the Oudh Wasikas Act, 1886.

2. The allowances respectively known as the Amanat Wasikas, the Zamanat Wasikas and the Loan Wasikas are, within the meaning of the Pensions Act, 1871, pensions conferred by a former Government and continued by the British Government on political considerations.

3. Notwithstanding anything in section 10 of the said Act, the Local Government may, without the consent of the holder of a pension payable out of the interest accruing on the 5th Oudh loan, order the whole or any part of the pension to be commuted on the terms referred to in the fourth article of the treaty executed with respect to that loan on the first day of March, 1829, and ratified by the Governor General in Council on the eighth day of May in the same year.

## STATEMENT OF OBJECTS AND REASONS.

CERTAIN allowances, locally known as Amanat Wasikas, Zamanat Wasikas and Loan Wasikas, are paid by the British Government to the descendants of certain relatives and dependants of the Bahu Begam and the Vazirs and Kings of Oudh. Till the year 1880 no doubt was entertained that these allowances were pensions within the meaning of the Pensions Act, 1871. In that year it became desirable on financial grounds to commute one of the largest of them, and, a dispute having arisen as to the person entitled to receive the capitalized amount of the allowance, the Government had to consider whether it could safely pay the amount under cover of the Pensions Act to the person who appeared to be best entitled. The Hon'ble the Advocate General inclined to the opinion that a Wasika was a pension within the meaning of the Act, but thought there was a good deal to be said in favour of the opposite view. As the sum involved was so very large that the Government would not have been justified in incurring any risk in disposing of it, a special Bill was introduced into the Legislative Council and passed as the Taj Mahal Pension Act, 1881.

This step, which the Government was compelled to take for its own protection, necessarily suggested a doubt as to the applicability of the Pensions Act to Wasikas.

As it is expedient on political considerations that there should be no room for question as to the applicability of the Act to Wasikas, the Government has decided to introduce this Bill to remove the doubts created by the legislation of 1881.

*THE 9th June, 1886.*

J. W. QUINTON.

S. HARVEY JAMES,

*Offg. Secretary to the Government of India.*



## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

(First publication.)

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 23rd June, 1886:—

NO. 11 OF 1886.

## THE PUNJAB TENANCY BILL.

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#### *A Bill to amend the Law relating to the Tenancy of Land in the Punjab.*

WHEREAS it is expedient to amend the law relating to the tenancy of land in the Punjab; It is hereby enacted as follows:—

### CHAPTER I.

#### PRELIMINARY.

Short title, local extent and commencement.

1. (1) This Act may be called the Punjab Tenancy Act, 1886.

(2) It extends to the territories for the time being administered by the Lieutenant-Governor of the Punjab and its Dependencies; and

(3) It shall come into force on such date (hereinafter called the commencement of this Act) as the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the official Gazette, appoint in this behalf.

Repeal.

2. (1) The Punjab Tenancy Act, 1868, is hereby repealed; and

(2) All suits, appeals and applications instituted, preferred and made under that Act, and pending at the commencement of this Act, shall, so far as may be, be deemed to have been respectively instituted, preferred and made under this Act.

3. In this Act, unless there is something repugnant in the subject or context,—

Definitions.

(a) "land" means land which is let or occupied for agricultural purposes or for purposes subservient to agriculture, and includes the sites of buildings appurtenant to such land:

(b) "tenant" means a person who holds land of another person, and is, or, but for a special contract, would be, liable to pay rent for that land to that other person. But it does not include an inferior landowner, or a farmer or mortgagee of the rights of a landowner, or a person who takes a lease of unoccupied land for the purpose of sub-letting it:

(c) "landlord" means the person of whom a tenant holds land, and to whom the tenant is, or, but for a special contract, would be, liable to pay rent for that land:

(d) "tenant" and "landlord" include the predecessors and representatives in interest of a tenant and landlord respectively:

(e) "rent" means whatever is payable, deliverable or renderable in money, kind or service by a tenant on account of the use or occupation of land held by him:

(f) "pay," "payable" and "payment," used with reference to rent, include "deliver," "deliverable" and "delivery," and "render," "renderable" and "rendering":

(g) "arrear of rent" means rent which remains unpaid after the date on which it becomes payable:

(h) "tenancy" means a parcel of land held by a tenant of a landlord under one lease or one set of conditions:

(i) "land-revenue" means—

- (1) the land-revenue for the time being assessed on land, whether the assessment is leviable or not; or

*The Punjab Tenancy Bill.*  
(Chapter II.—Right of Occupancy.—Sections 4-5.)

## CHAPTER II.

## RIGHT OF OCCUPANCY.

Tenants having right 4 (1) A tenant—

(a) who has before or after the commencement of this Act paid no rent in respect of land occupied by him beyond the amount of the land-revenue thereof and the rates and cesses for the time being chargeable thereon, and whose father and grand-father, uncle and grand-uncle, occupying the same land, paid no rent beyond the amount aforesaid, or

(b) who has before or after the commencement of this Act continuously occupied land of which he was landowner and of which he ceased to be landowner otherwise than by forfeiture to Government or by any voluntary act, or

(c) who, before the twenty-first day of October, 1868, settled in a village along with the founders thereof as a cultivator of the land occupied by him, and who, since so settling there, has before or after the commencement of this Act continuously occupied that land, or

(d) who is, or has before or after the commencement of this Act been, jágirdár of the village or any part of the village in which the land occupied by him is situate, and who—

(i) being such jágirdár, has before or after the commencement of this Act continuously occupied the land for not less than twenty years, or

(ii) having been such jágirdár, occupied the land while he was jágirdár and has before or after the commencement of this Act continuously occupied it for not less than twenty years,

shall be deemed to have a right of occupancy in the land so occupied.

(2) If a tenant proves that he has before or after the commencement of this Act continuously occupied land for thirty years and paid no rent therefor beyond the amount of the land-revenue thereof and the rates and cesses for the time being chargeable thereon, he shall be presumed to have fulfilled the conditions of clause (a) of sub-section (1).

(3) If a tenant occupied land in a village in 1868, he shall, for the purposes of clause (c) of sub-section (1), be presumed to have settled there along with the founders of the village.

5. A tenant whose name is entered in a record-of-rights sanctioned by the Local Government before the

twenty-first day of October, 1868, as of a tenant having a right of occupancy in land which he has continuously occupied from the time of the preparation of that record, shall be deemed to have and to have had a right of occupancy in that land unless the landlord proves in a suit—

(a) that within the thirty years immediately preceding the institution of the suit other tenants of the same class in the same village, or in adjacent villages, have ordinarily been ejected at the will of the landlord; or

(b) that before the twenty-first day of October, 1868, the tenant, in the presence of an officer authorized to attest entries in the record—

(2) where the land-revenue has been permanently assessed, or has been wholly or in part compounded for or redeemed, the amount which, but for the permanent assessment, composition or redemption, would have been payable; or

(3) where no land-revenue has been assessed on land, the amount which would have been assessed thereon if the rate sanctioned for like land in the same village or in adjacent villages had been applied;

and includes any rate imposed in respect of the increased value of land due to canal-irrigation, unless, where the land is assessed, that increased value has been taken into account in the assessment:

(f) "rates and cesses" mean the local rate payable under the Punjab District Boards Act, 1883, the zaildári, lambardári and patwári cesses, and any other rates and cesses of which the levy has been generally or specially authorised by the Local Government;

(g) "Revenue-officer" and "Revenue Court" have the meanings respectively assigned to those expressions in the Punjab Land-revenue Act, 1868:

(h) "prescribed Revenue-officer," in any provision of this Act, means such Revenue-officer as the Local Government may, by notification in the official Gazette, direct by name or by virtue of his office to discharge the functions of a Revenue-officer under that provision:

(m) "improvement" means, with reference to a tenancy, any work which is suitable to the tenancy and consistent with the conditions on which it is held, by which the letting value of the tenancy has been and continues to be increased, and which, if not executed on the tenancy, is either executed directly for its benefit, or is, after execution, made directly beneficial to it;

*Explanation I.*—It includes—

(1) the construction of works for the storage of water, for the supply of water for agricultural purposes, for drainage, and for protection against floods;

(2) the construction of wells, the reclaiming, enclosing, levelling and terracing of land for agricultural purposes, and other works of a like nature;

(3) the erection of buildings in connection with the land for the more convenient or profitable cultivation thereof; and

(4) the renewal or re-construction of any of the foregoing works, or such alterations therein or additions thereto as are not required for maintaining the same and as durably increase their value;

But it does not include any benefit accruing to land from the ordinary operations of husbandry;

*Explanation II.*—A work which benefits several tenancies may be deemed to be, with respect to each of them, an improvement;

*Explanation III.*—A work executed by a tenant is not an improvement if it substantially diminishes the value of any other part of his landlord's property:

(a) "grandfather" includes the father of an adoptive father, the adoptive father of a father and the adoptive father of an adoptive father; "uncle" includes the brother of an adoptive father; and "grand-uncle" includes the adoptive brother of an uncle; and

(b) jágirdár includes the holder of any revenue-land.

*The Punjab Tenancy Bill.*  
(Chapter III.—Rent.—Sections 6-15.)

voluntarily admitted himself to be a tenant not having a right of occupancy, and that the admission was recorded at the time by that officer.

[Act XXVIII, 1868, s. 7.]

6. If the tenant has voluntarily exchanged the land, or any portion of the land, formerly occupied by him, for other land belonging to the same landlord, the land taken in exchange shall, for the purposes of this Act, be held to be subject to the same right of occupancy as that to which the land given in exchange would have been subject if the exchange had not taken place.

[Act XXVIII, 1868, s. 6.]

7. Nothing in the foregoing sections of this Chapter shall preclude any person claiming a right of occupancy on any ground other than the grounds specified in those sections from suing to establish the right.

[Act XXVIII, 1868, s. 9.]

8. No tenant shall acquire a right of occupancy by mere lapse of time.

[Act XXVIII, 1868, s. 9, amended.]

9. In the absence of a custom to the contrary, no one of several joint owners of land shall acquire a right of occupancy in the land jointly owned by them.

### CHAPTER III.

#### RENT.

##### *Revision of Rents.*

[New.]

10. (1) At any time while a local area is being assessed, and before the assessment has been confirmed, the prescribed Revenue-officer, of his own motion or on the application of either landlord or tenant, may, subject to the other provisions of this Chapter, revise the rent of any tenant having a right of occupancy in land situate in that local area.

(2) At any other time the prescribed Revenue-officer, on the application of either landlord or tenant, may, subject to those provisions, revise the rent of any tenant having a right of occupancy.

##### *Conversion of Rents.*

[Act XXVIII, 1868, s. 10.]

11. (1) In the case of a tenant having a right of occupancy or holding under an unexpired lease, rent in kind shall not be commuted into rent in money, or rent in money into rent in kind, without the consent of both the landlord and the tenant.

(2) With their consent the commutation may be made by the prescribed Revenue-officer on application made to him for that purpose by either of them.

[New.]

12. When the rent payable by a tenant having a right of occupancy is fixed at a lump sum without relation to the land-revenue of his tenancy and the rates and cesses chargeable thereon, the prescribed Revenue-officer shall, on the application of either the landlord or the tenant, determine what portion of the rent is represented by the land-revenue and rates and cesses.

##### *Enhancement.*

13. (1) An enhancement of rent shall not take effect before the commencement of the agricultural year next following the date of the agreement or order under which it is payable.

(2) The agricultural year shall for the purposes of this section commence on the sixteenth day of June.

14. Where the rent of a tenant having a right of occupancy in any land is a share of the produce, or of the appraised value thereof, with or without an addition in cash, or is paid according to cash-rates fixed with reference to the nature of the crops grown, the tenant shall be entitled to occupy the land at the share or rates hitherto paid by him:

Provided that—

(a) when the land or any part thereof previously not irrigated or flooded becomes irrigated or flooded, the share or rates payable in respect of the land or part may, subject to the provisions of this Act, be enhanced to the share or rates paid by tenants having a right of occupancy for irrigated or flooded land of a similar description and with similar advantages in the same neighbourhood; and

(b) where, in the case of rent consisting of a share of the produce, or of the appraised value thereof, with an addition in cash, that addition is, the amount of the land-revenue and rates and cesses, or a proportion thereof, it may, on an enhancement of that amount, be enhanced—

(i) if the addition was the full amount, then to the enhanced amount of the land-revenue and rates and cesses, and

(ii) if the addition was a proportion of the amount, then to the same proportion of the enhanced amount.

15. (1) The rent payable by a tenant having a right of occupancy, to whom the last foregoing section does not apply, may be enhanced on the ground that the rent paid by him in respect of his tenancy, after deducting the amount of the land-revenue thereof and the rates and cesses chargeable thereon, is—

(a) if he belongs to the class specified in clause (a) of sub-section (1) of section 4, less than two annas per rupee of the amount of the land-revenue;

(b) if he belongs to any of the classes specified in clauses (a), (b) and (c) of that sub-section, less than four annas per rupee of the amount of the land-revenue;

(c) if he does not belong to any of the classes specified in that sub-section, less than eight annas per rupee of the amount of the land-revenue.

(2) In a case to which sub-section (1) of this section applies, the rent may be enhanced to an amount not exceeding two, four or eight annas per rupee of the amount of the land-revenue, as the case may be, in addition to the amount of the land-revenue and rates and cesses.

*The Punjab Tenancy Bill.*  
(Chapter III.—Rent.—Sections 16-21)

*Reduction.*

16. (1) When the land, or any part of the land, held by a tenant having a right of occupancy to whom section 14 applies ceases to be irrigated or flooded, the share or rates payable in respect of the land or part may be reduced to the share or rates paid by tenants having a right of occupancy for unirrigated or unflooded land of a similar description and with similar advantages in the same neighbourhood.

(2) Where the rent of a tenant having a right of occupancy is a share of the produce, or of the appraised value thereof, with an addition in cash, and that addition is the amount of the land-revenue and rates and cesses, or a proportion thereof, the addition may, on a reduction of that amount, be reduced—

(i) if it was the full amount, then to the reduced amount of the land-revenue and rates and cesses; and

(ii) if it was a proportion of the amount, then to the same proportion of the reduced amount.

17. (1) The rent payable by a tenant having a right of occupancy, to whom section 14 does not apply, may be reduced on any of the following grounds, and on no others, namely:—

*first*—that the area of the land held by him has been diminished or has been proved to be less than the area for which rent has been previously paid by him;

*second*—that the productive powers of that land have been decreased by any cause beyond his control;

*third*—that the rent of the land is regulated by the amount of the land-revenue thereof and that the land-revenue has been reduced;

*fourth*—that within the six years immediately preceding the passing of this Act the rent has been raised above the maximum allowed by section 15.

(2) In a case to which sub-section (1) of this section applies, the rent shall be reduced to the amount which the Revenue-officer considers fair and equitable:

Provided that—

(a) where the reduction is made on the third ground, it shall be in proportion to the reduction in the land-revenue of the land;

(b) where the reduction is made on the fourth ground, the rent shall not be reduced below the maximum allowed by section 15; and

(c) a reduction shall not be made in any case if its effect would be to make the rent of the land less than the amount of the land-revenue thereof and the rates and cesses chargeable thereon.

*Remission.*

18. Notwithstanding anything contained in the foregoing sections of this Chapter, if it appears to a Court making a decree for an arrear of rent that the area of a tenancy has been so diminished by diluvion or otherwise, or that the produce thereof has been so diminished by drought, hail, deposit of sand, or

other like calamity, that the full amount of rent payable by him cannot be equitably decreed, the Court may allow such remission from the rent payable by him as may appear to it to be just.

19. (1) Whenever for any cause the payment of the whole or any part of the land-revenue payable in respect of any land is remitted or for any period suspended, the prescribed Revenue-officer may by order remit or for that period suspend, as the case may be, the payment of the rent of that land to an amount which may bear the same proportion to the whole of the rent payable in respect of the land as the land-revenue of which the payment has been remitted or suspended bears to the whole of the land-revenue payable in respect of the land.

(2) An order passed under sub-section (1) shall not be liable to be contested by suit in any Court.

(3) A suit shall not lie for the recovery of any rent of which the payment has been remitted, or during the period of suspension for any rent of which the payment has been suspended.

(4) Where the payment of rent has been remitted or suspended for any period, that period shall be excluded in the computation of the period of limitation prescribed for a suit for the recovery of the rent.

(5) If the landlord collects any rent of which the payment has been remitted, or before the expiration of the period of suspension collects any rent of which the payment has been suspended, the whole of the land-revenue remitted or suspended in his favour shall become immediately payable by him.

(6) The provisions of this section relating to the remission or suspension of the payment of rent may be applied, so far as they can be made applicable, to land held free of revenue, in any case in which, if the land had been revenue-paying, the payment of the whole or any part of the land-revenue thereof might, in the opinion of the prescribed Revenue-officer, have been remitted or suspended under the rules for the time being in force for regulating the remission and suspension of land-revenue.

*Division of Produce and Appraisement of Crops.*

20. When rent is taken by division of the produce, or by estimate or appraisement of the crop, if either the landlord or the tenant neglects to attend, either personally or by agent, at the proper time for making the division, estimate or appraisement, or if there is a dispute about the division of the produce or the quantity or value of the crop, the prescribed Revenue-officer may, on the application of either party, appoint such person as he thinks fit to be a referee to divide the produce or estimate or appraise the crop.

21. (1) When the Revenue-officer appoints a referee under the last foregoing section, he may in his discretion authorise the referee to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications and mode of selecting those assessors (if any) and the procedure



*The Punjab Tenancy Bill.*  
(Chapter V.—Alienation of, and Succession to, Right of Occupancy.—  
Sections 29-36.)

(3) If the amount is so paid within that period of fifteen days, an order for the ejectment of the tenant shall not be made.

(4) The Revenue-officer may for special reasons extend the period of fifteen days mentioned in this section.

29. (1) If a landlord desires to eject a tenant not having a right of occupancy, he may apply to the prescribed Revenue-officer on or before the fifteenth day of January to cause a notice of ejectment to be served on the tenant.

(2) The landlord shall pay the cost of service, and the Revenue-officer shall cause the notice to be served as soon as may be.

(3) The notice shall specify the name of the landlord on whose application it is issued and the land to which it relates, and shall inform the tenant that if he means to contest his liability to ejectment he must institute a suit for that purpose within two months from the date of the service of the notice.

(4) If within two months from the date the tenant does not institute a suit to contest his liability to ejectment, or if, having instituted a suit for that purpose within that period, he fails in the suit, the prescribed Revenue-officer shall, on the application of the landlord, eject him from the land.

30. If a tenant not having a right of occupancy whose rent is payable in kind or whose rent is in arrear fails to cultivate the land which he holds in accordance with the conditions on which he holds it, he may, on the application of the landlord to the prescribed Revenue-officer, be ejected from the land by order of that officer at any time of the year.

*Relief for wrongful dispossession.*

31. A tenant who has been dispossessed without his consent of his tenancy or any part thereof otherwise than in execution of an order of the prescribed Revenue-officer may, in a suit under section 9 of the Specific Relief Act, 1877, for recovery of possession of the tenancy or part, or in a separate suit, claim compensation for wrongful dispossession.

32. A tenant who has been ejected in execution of an order of a Revenue-officer under section 30 of this Act may, if he denies his liability to be ejected on the ground of his having a right of occupancy, institute a suit for recovery of the occupancy of the land or for compensation for wrongful dispossession, or for both.

CHAPTER V.

ALIENATION OF, AND SUCCESSION TO, RIGHT OF OCCUPANCY.

*Alienation.*

Right of occupancy is transferable in execution of a decree or order of any Court.

33. A right of occupancy shall not be attached or sold in execution of a decree or

34. (1) A tenant having a right of occupancy [Act XXVIII, 1868, s. 31 and 34, and Act IX, 1868, s. 34.] may transfer that right by sale, gift, mortgage or sub-lease, subject to the conditions contained in this section.

(2) If he intends to transfer the right by sale, gift or mortgage, or by sub-letting it in consideration of a fine or premium exceeding seven times the annual rent of the land in which the right subsists, he shall give to his landlord a written notice of his intention, and shall defer proceeding with the transfer for a period of one month from the date on which the notice is given.

(3) Within the said period of one month the landlord may claim to purchase the right at such value as the prescribed Revenue-officer may, on application made to him in this behalf, fix.

(4) When the application to the Revenue-officer is to fix the value of a right of occupancy which is already mortgaged, he shall fix the value of the right as if it were not mortgaged.

(5) The landlord shall be deemed to have purchased the right if he pays the value to the Revenue-officer within such time as that officer may appoint.

(6) On the value being so paid, the Revenue-officer shall, on the application of the landlord, make an order for the ejectment of the tenant or other person in occupation of the land subject to the right.

(7) If the right of occupancy was already mortgaged, the mortgage-debt shall be a charge in exoneration of the land on the value paid by the landlord.

(8) Any transfer made in contravention of this section shall be void.

35. (1) When a tenant has transferred a right of occupancy by sale or gift, or by mortgage with possession, to a person other than the landlord, that person shall, in respect of the land in which the right subsists, have the same rights, and be subject to the same liabilities, as the tenant who made the transfer had and was subject to. [Act XXVIII, 1868, s. 32.]

(2) A person to whom land is sub-let by a tenant having a right of occupancy therein shall, in respect of that land, and so far as regards the landlord, be, jointly with the tenant, subject to all the liabilities of the tenant under this Act. [Act XXVIII, 1868, s. 33.]

36. (1) In a suit by a landlord to set aside a transfer by a tenant of a right of occupancy by sale, gift, mortgage or sub-lease, the tenant shall be joined as a defendant. [New.]

(2) If the Court sets aside the transfer, it shall fix the value of the right of occupancy, and specify a time within which, by payment of that value into Court, the landlord may become purchaser of the right.

(3) If the right of occupancy is already mortgaged, the Court shall fix the value of it as if it were not mortgaged.

(4) If within the time specified the landlord pays into Court the value fixed by the Court, the prescribed Revenue-officer shall, on the application of the landlord, make an order for the ejectment of the tenant or other person in occupation of the land subject to the right.



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(Chapter VI.—Compensation.—Sections 37-46.)

(5) If the right was already mortgaged, the mortgage-debt shall be a charge in exoneration of the land on the value paid by the landlord.

(6) If the landlord fails to pay the value into Court within the time specified, the rights and liabilities of the tenant shall continue, and the Court, if it thinks fit, may make a decree against the tenant in favour of the person to whom the transfer purported to be made for the sum paid by that person as consideration for the transfer.

*Succession.*

[Act XXVIII, 1883, s. 36.] **37. (1)** When a tenant having a right of occupancy dies, the right shall devolve as if it were land.

(2) When the widow of a deceased tenant succeeds to a life-interest in a right of occupancy, she shall not transfer the right, or her interest therein, by sale, gift or mortgage, or by sub-lease for a term exceeding one year.

*Saving of Personal Law and Local Custom.*

[Now.] **38.** Nothing in this Chapter shall be construed to affect the provisions of sections 5 and 7 of the Punjab Laws Act, 1872, in any case in which the personal law or local custom applicable to a tenant having a right of occupancy confers on him a larger power of transfer than is conferred on him by this Chapter, or prescribes a course of succession different from that prescribed by the last foregoing section.

**CHAPTER VI.**

**COMPENSATION.**

*Compensation for Improvements.*

[Act IX, 1883, s. 29.] **39. (1)** A tenant having a right of occupancy shall be entitled to make improvements on his tenancy.

(2) If a landlord desires to execute any work on the tenancy of a tenant having a right of occupancy, he may apply to the prescribed Revenue-officer for permission to execute it, and that officer, after hearing the objections, if any, of the tenant, shall grant or refuse the permission as he thinks fit.

[Act XXVIII, 1883, s. 37.] **40. (1)** A tenant not having a right of occupancy may make an improvement on his tenancy with the assent of his landlord.

(2) If at any time the question arises whether or not the landlord assented to the making of an improvement by a tenant not having a right of occupancy, the assent may be inferred from the circumstances attending the making of the improvement.

[Act IX, 1883, s. 30.] **41. (1)** If a tenant is ejected from his tenancy he shall be entitled to compensation for improvements which he may have made in accordance with this Act within the twenty years immediately preceding his ejection, and for which compensation has not already been made.

(2) Whenever a Revenue-officer makes an order for the ejection of a tenant, he shall determine the amount of compensation (if any)

due under this section to the tenant for improvements, and, notwithstanding anything contained in Chapter IV or Chapter V, shall stay the execution of the order until that amount, less any arrears of rent or costs due to the landlord from the tenant, has been paid to the Revenue-officer by the landlord.

(3) Compensation shall not be awarded under this section for an improvement made by a tenant in contravention of a written agreement between himself and the landlord, or after the institution of the suit, or the service of the notice, which resulted in the order for his ejection.

(4) Improvements made by a tenant before this Act comes into force shall be deemed to have been made in accordance with this Act, unless, in the case of a tenant not having a right of occupancy, it is shown that the landlord forbade the tenant to make the improvement.

**42.** In proceedings for the enhancement of the rent of a tenant having a right of occupancy, improvement of the land, or increase in the value of the produce of his tenancy, or in the productive powers thereof, resulting from any improvement made by him within the twenty years immediately preceding the institution of the proceedings, shall not be taken into consideration as a ground for enhancing the rent.

**43.** In estimating the compensation to be awarded under section 41 for an improvement, the Revenue-officer shall have regard to—

- (a) the amount by which the letting value of the tenancy is increased by the improvement;
- (b) the labour and capital expended by the tenant in making the improvement and the return received by him therefrom; and
- (c) any reduction or remission of rent or other advantage given to the tenant by the landlord in consideration of the improvement.

**44.** The compensation shall be made by payment in money, unless the parties agree that it be made in whole or in part by the grant of a beneficial lease of land or in some other way.

**45.** If a landlord tenders to a tenant not having a right of occupancy a lease of his tenancy for a term of not less than twenty years from the date of the tender, at the rent then paid by the tenant, or at such other rent as may be agreed upon, the tender, if accepted by the tenant, shall bar any claim by him in respect of improvements previously made by him on the tenancy.

**46. (1)** An entry in the record-of-rights of any village providing—

- (a) that a landlord may prevent a tenant from making, or eject him for making, such



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improvements on his tenancy as he is entitled to make under this Act, or

- (5) that a tenant ejected from his tenancy shall not be entitled to compensation for improvements in any case in which he would under this Act be entitled to compensation for them,

shall be void.

(2) A Revenue-officer shall not record in a record-of-rights or elsewhere an agreement containing any such provision as is mentioned in sub-section (1).

*Compensation for Disturbances of reclaiming or clearing Tenants.*

47. (1) Any tenant, whether he has a right of occupancy or not, who has reclaimed, cleared or brought under cultivation waste land, shall, if ejected from that land, be entitled to receive from the landlord as compensation for disturbances, and in addition to any compensation for improvements, a sum calculated at the annual rent of the land from which the tenant is ejected for every year during which he has occupied that land, subject to a maximum limit of five years' rent:

Provided that if the tenant, being a tenant having a right of occupancy, is ejected on application under section 28, or, being a tenant not having a right of occupancy, is ejected on application under section 29 at a time when a decree against him for an arrear of rent due in respect of the land has remained unsatisfied for a longer period than three months, he shall not be entitled to compensation under this section.

(2) If rent has been paid for the land by a share of the produce, or if no rent, or no rent other than the land-revenue and rates and cesses, has been paid therefor, the compensation may be computed as if double the amount of the land-revenue of the land were the annual rent thereof.

48. When an application is made for the compensation payable to a tenant entitled to compensation under the last foregoing section, and the Revenue-officer to whom the application is made makes an order for the ejectment, he shall determine the amount of compensation payable to the tenant, and, notwithstanding anything contained in Chapter IV or Chapter V, shall stay the execution of the order until that amount, less any arrears of rent or costs due to the landlord from the tenant, has been paid to the Revenue-officer by the landlord.

*Relief in case of ejectment before determination of Compensation.*

49. (1) If the Revenue-officer omits to determine under this Chapter the amount of compensation payable to a tenant for improvements or disturbances, and the tenant is ejected, the ejectment shall not be invalidated by reason of the omission, but, notwithstanding anything in the Code of Civil Procedure or any other enactment, XIV of 1884, the prescribed Revenue-officer may, on application made by the tenant within one year from the date of the ejectment, revise the proceedings to the extent necessary to correct the omission, and make in favour of the tenant an order for the payment to him by the landlord of such compensation as he may determine the tenant to be entitled to.

(2) An order made under sub-section (1) may be executed by the prescribed Revenue-officer in the same manner as a decree for money may be executed by a Revenue Court.

## CHAPTER VII.

### SUPPLEMENTAL PROVISIONS.

50. The Local Government may, for all or any of the territories under its administration, by order published in the official Gazette, fix for the purposes of sections 13, 23, 24 and 29, or of any of those sections, any other dates than those specified therein:

Provided that a notification under this section shall not have effect till after the expiration of six months from the date thereof.

51. The Financial Commissioner may, from time to time, with the previous sanction of the Local Government, make rules for determining for the purposes of this Act the amount of the land-revenue of any land.

52. (1) All powers conferred by this Act on the Local Government may be exercised from time to time as occasion requires.

(2) The powers conferred by sections 50 and 51 on the Local Government and the Financial Commissioner, respectively, to issue orders and make rules, may be exercised at any time after the passing of this Act, but an order or rule so issued or made shall not take effect till the commencement of this Act.

## STATEMENT OF OBJECTS AND REASONS.

Proposals for the amendment of the Punjab Tenancy Act, 1868, have been made on various occasions during the last ten years. The first proposals for the amendment of the Act were made in 1876 by the Financial Commissioner with the general concurrence of the Judges of the Chief Court. But the Lieutenant-Governor (Sir Henry Davies), thinking it inexpedient to re-open questions of principle which had been fully discussed and decided when the Act was passed, confined himself to advocating a few minor modifications in the law. The Government of India, however, was unwilling to resort to legislation until its necessity had been further demonstrated.

artificial authority which the second paragraph of section 2 of the Act gave to entries in the records of regular settlements made before the 18th November, 1871. All the districts of which a regular settlement was made before that date will have been re-settled in the course of the next six years, and the paragraph, even if left on the statute-book, would then cease to operate. The first paragraph of the section, which provides that nothing in the Tenancy Act shall affect the operation of a decree of Court, or of an agreement in writing between a landlord and tenant, has also been removed on the ground that it is not needed. Decrees of Court cannot, of course, be affected by subsequent legislation which does not deal in express terms with their subject-matter; and agreements stand on their own merits, whether they are entered in a record-of-rights or not. The fact is, that the whole section was obviously enacted with reference to the subsided controversies of eighteen years ago. As the records framed by Mr. Prinsep in the Amritsar and other settlements were reversed by the legislation of 1868 in important matters relating to the status of tenants, it was thought convenient to explain, in express terms, to what extent they would be maintained. But the revision of records consequent on the passing of the Act of 1868 was carried out shortly afterwards, and the section under discussion has long ceased to be of any practical use.

13. The definitions contained in section 3 of the Bill are for the most part new. Several of them are based on the definitions contained in the Central Provinces Tenancy Act (IX of 1883), as will be seen from the marginal references on the Bill.

Clause (d) is of some importance, especially with regard to Chapters II and VI of the Bill.

Clause (i) is so drafted as to meet the case of the assessment of an owner's rate, water-advantage rate, or other similar rate upon canal-irrigated lands.

Clause (k) indicates that the procedure by which Revenue Courts and Revenue-officers acting under the Punjab Tenancy Act will be guided is that laid down for the guidance of Revenue Courts and Revenue-officers by the Land-revenue Bill which it is proposed to introduce at an early date with a view to its being passed simultaneously with this Bill. A clause in the Land-revenue Bill will remove the necessity of section 42 of the present Tenancy Act.

In clause (m) the definition of "improvement" contained in section 38 of the Act has been revised and extended.

The alteration of the wording of the Punjab Tenancy Act made in clause (n) is clearly required.

#### CHAPTER II.—RIGHT OF OCCUPANCY.

14. The first of the changes in this Chapter consists in the omission of the word "*heretofore*" from clause (a) of section 4, sub-section (1), of the Bill, corresponding with clause (1) of section 5 of the Act, and the addition of a sub-section by which on proof by the tenant of continuous occupation of his tenancy for thirty years, and payment of nothing in the shape of rent beyond land-revenue and rates and cesses, a presumption is raised in his favour that the conditions of clause (a) have been fulfilled. This alteration of the law was first proposed by the late Financial Commissioner, Mr. J. B. Lyall, in a memorandum on proposed amendments of the Act written in 1882.

Mr. Lyall wrote as follows:—

"I would certainly strike out the word '*heretofore*' in clause (1) of section 5. It may be argued that this is a deviation from the great principle expressed in the first sentence of section 2. If it is so, I won't allow an exception in this case. By a recent decision of the Chief Court, which is no doubt legally correct, no tenant can establish a right under clause (1) of section 5 unless the land had been held free of rent and service for three generations in 1858. Before that decision was published, many Courts had been decreeing in favour of tenants now holding in the third generation, though they did not so hold in 1858. Most Settlement-officers, I think, interpreted the law in that way. I do not think the law amended as I propose would give a tenant a right greater than he may be held to be equitably entitled to. On the other hand, very few tenants can possibly establish a right under the clause as interpreted by the Chief Court. Except in the districts of the old Delhi territory, it is almost certain that the grandfather of the tenant of 1858 must have died before annexation, perhaps long before. Few men now survive who can give evidence as to those times, and there are no records to refer to."

In forwarding to the Government of India a copy of this memorandum with a minute by the Lieutenant-Governor, the Punjab Government supported the proposed change in the following words:—

"Mr. Lyall suggests that this amendment may involve a deviation from the principle that no occupancy-right shall be acquired by mere lapse of time. It does not, however, appear that this is so; for the reasons for acknowledging the right depend not upon any particular duration of tenure (for obviously the time during which the land may pass through the hands of grandfather, father and son may vary enormously in different cases), but rather upon the custom of the country, and perhaps also on the circumstance that the proprietor stands by and sees two successions take place without interference."

a sound time, was accepted by the them, was drafted the sub-section is to place a reasonable limit on a clause. It is contended that, if a that he and his father and uncle ars, it is only reasonable to throw her's or grand-uncle's tenancy was would be forthcoming, and, if it is

have been re-drafted in section 4 ave occurred in construing them. settlement with village-founders lord when the tenant has estab- as trustworthy evidence can be ex- section 4 of the Bill any landowner a right of occupancy in that land. of the Act, the date of the passing special weight given by clause (b) to sissions which were made previous with the history of the subject. As 863 large numbers of cultivators ry at first settlement were recorded legislature, and more than 63,000 occupancy-status of which the pro- would have deprived them. At the special opportunities of rebutting the or other records, particularly when himself admitted that he was a the landlords brought some 2,000 ore, which the law was designed tenants made since the passing ng as that of any other part of the be true till the contrary is estab-

Adding the acquisition of a right of llage-community, has been repealed. om asserting a right of occupancy of the Bill.

of occupancy-tenants may be fixed at other times on application of the that rents so fixed should not be et, but it has now been decided that hould get the benefit of the reduc- ey are in a position to claim them. 14 and 15 provide, may well be at settlement or at any other time. upancy-tenants, frequent and capri-

d Revenue-officer shall, on the appli- of a lump sum rent is represented necessary to enable a landlord to a tenant with a right of occupancy sent Act. Power to vary dates for

of rents taken by division of crop e subjected to the general law of on has been made regarding them t, and the corresponding portion of in kind and partly in cash, the us and rates and cesses, or a pro-

1 of the Act. The modifications of the Bill. It has been found the second and third grounds of su- ntly inseparable from the use of such the conclusions which have been

grounds have been very various. It is enhancement or reduction of rent can be application. Accordingly, it has been proposed that enhancement and reduction of the rent of tenants should be referred to the land-revenue of the tenancy, each class of tenants having a right of appeal generally with the existing scale under the Revenue-officer, it will be observed, may grant or refuse to oblige to do so.

As they are separately provided for in the Bill; and section 13, which, except in the case of a decree for enhancement has been provided for a period of five years, seems to be the only one.

Section 14, and section 17 is the correlative of section 13 of the Act (which has been added to section 14 of the Act) (third ground for reduction) is obviously provided to meet cases in which a period of six years will, and the clause will allow of the application for reduction of rent in these cases, that the maximum allowed by section 13 of the

Revenue-officers directing a suspension or remission of rent, has been in the Government of India and approved by the

with sections 17 and 18 of the Act, and in which rent is taken by division of the

#### RENT AND EJECTMENT.

of clearly distinguishing between ejectment in the case of tenants not having a right of occupancy made as simple and complete as possible. The order of a Revenue-officer (section 17) may temper the severity of the law to do so.

Act has been omitted from the Bill. It will cease to be effective, as the thirty years will, in most cases, have run out already. It has hardly ever been made by provincial custom. It has therefore

respectively sections 22-25 of the Act of 1880, and the latter portion of section 21 of

#### PRE-EMPTION TO, RIGHT OF OCCUPANCY.

It is intended as to remove doubts as to the exact nature of the landlord's right of pre-emption, and of sub-leases for long periods in connection with settling disputes as to the value of the land. It has not been thought necessary to give tenants of other classes to alienate their land. If the landlord does not object to

law to the protection of the interests of a tenant in a valid alienation of his right. Inasmuch as the law in proving an alienation to be invalid, the law will be found to be in the hands of the occupancy-right, which was

substitute the ordinary law of succession in the case of a right of occupancy laid down in the law. The change made will be found to be in the hands of the landlord, on the subject, at all events as far as the tenant having a right of occupancy is



tion is right in other respects is a point to which attention is drawn. If custom does not lay down the same rule for the devolution of the property, evidence bearing on the matter will receive careful consideration. By section 38 of the Bill the provisions of the Punjab Laws Act, 1872, in so far as they relate to local custom are saved in this matter.

#### CHAPTER VI.—COMPENSATION.

The Bill regarding compensation for improvements do not require to be modelled upon the provisions of the Tenancy Act of the Central Provinces, which is inconsistent with the spirit of the present Act. The provisions are inserted in accordance with the views advanced by the Famine Commission, the Government of India and Secretary of State. As the Act entitles a tenant to compensation whether the improvement for which compensation is claimed was made by himself or his predecessor (section 3 (d)).

The Bill is intended to afford some measure of protection to tenants-at-will on up land. There is a strong feeling among tenants and landlords that they are entitled to special consideration.

The Bill provides that in cases in which compensation is due to a tenant for improvements, the compensation shall be paid to him before he is ejected, and that an omission to fix compensation before that event may be rectified at any time (section 49). These provisions are very necessary in fairness to the tenant.

#### CHAPTER VII.—SUPPLEMENTAL PROVISIONS.

The Bill gives the Local Government authority to alter the dates for the completion of improvements and for relinquishments and ejections; and provides that the Local Government may make rules for determining for the purposes of the Bill the value of improvements on any land.

W. G. DAVIES.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.